TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 659

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS (UNITED STATES VETERANS' ADMINISTRATION), PETITIONER

vs.

MINNIE STEIN, AS GUARDIAN OF THE ESTATE OF EDMUND J. STEIN, A WEAK-MINDED PERSON

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT AT PITTSBURGH, STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED DECEMBER 27, 1935

CERTIORARI GRANTED FEBRUARY 3, 1936

SUPREME COURT OF THE UNITED STATES

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1a In the Court of Common Pleas of Allegheny County, Pennsylvania

No. 1100, April Term 1921

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

Agreed statement of facts in accordance with rule 56

It is hereby mutually agreed by and between Hallock C. Sherrard, attorney for the estate of Edmund J. Stein, an alleged weak-minded person, and Vincent A. Baldauf, attorney for the U. S. Veterans' Administration, Pittsburgh, Pa., that the following Agreed Statement of Facts shall constitute the record in this case, and that this stipulation shall be printed in lieu of all the pleadings filed at the above number and term. Said pleadings are as follows:

A. Petition of Guardian for Allowance for Legal Services and Expenses.

B. Answer by the U. S. Veterans' Administration to Petition for Allowance for Legal Services.

C. Opinion and Order of his Honor, Elder W. Marshall, Judge of the Common Pleas Court of Allegheny County, Pa.

D. Exceptions filed to said Order.

The pleadings above set forth hereinafter follow in order.

2a In the Court of Common Pleas of Allegheny County, Pennsylvania

No. 1100, April Term 1921

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

Petition for allowance for legal services and expenses

To the Honorable the Judges of Said Court:

The petition of Minnie Stein respectfully represents:

1. That she was duly appointed guardian of the estate of her son, the above-named veteran, by order of your Honorable Court, made March 8, 1921, at the above number and term.

2. That your petitioner has continued to act as guardian of the estate of her said son and for more than ten years past has been living most of the time in Washington, D. C., in order to be near her son who has been a patient at St. Elizabeths Hospital.

3. That said veteran has been rated as permanently and totally disabled and was entitled to compensation allowance in the sum of $100.00 per month, of which amount $50.00 per month was paid to your petitioner as guardian, $30.00 per month to your petitioner individually as dependent mother, and $20.00 per month to St. Elizabeths Hospital. Your petitioner has also been receiving $57.50

per month, representing payments due on said veteran's War Risk Insurance.

4. That under new legislation of Congress, enacted about a year ago, the compensation of $100.00 per month, payable on account of the permanent and total disability of said veteran has been cut
3a off, it being claimed by the Veterans' Administration that his disability existed prior to enlistment and was not incurred in or aggravated by his active service. That a hearing on this matter before the Board of Veterans' Appeals at Washington, D. C., has been set for Wednesday, March 28th, 1934, at 11:00 o'clock A. M., in Room 200, Arlington Building.

5. That from the time of your petitioner's appointment as guardian of the estate of her said son, she has been represented by Hallock C. Sherrard, Esq., 1301 Union Trust Building, Pittsburgh, Pennsylvania, as her counsel, and by reason of his familiarity with this case and the further fact that your petitioner was unable to make a proper presentation of the case without assistance to the said Board of Veterans' Appeals, she has requested her said counsel to make the trip to Washington from Pittsburgh in order to appear for her and present the claim of her said son to the said Board of Veterans' Appeals at the hearing so fixed. That your petitioner agreed with her said counsel to pay him the sum of $100.00 for his services and expenses in making said trip to Washington, D. C., which amount your petitioner believes to be very reasonable under all the circumstances. That your petitioner has on hand approximately $2,000.00 representing the estate of her son, the above-named veteran.

Wherefore, your petitioner prays your Honorable Court to make an order authorizing her to pay out of the funds in her hands the sum of $100.00 to Hallock C. Sherrard, Esq., for his services and expenses and making the trip to Washington, D. C., to represent her in her claim for her said son's estate before said Board of Veterans' Appeals.

(S) MINNIE STEIN,
Guardian Estate Edmund J. Stein.

4a CITY OF WASHINGTON,
District of Columbia, ss:

Before me, the undersigned authority, personally appeared Minnie Stein who, being duly sworn according to law, deposes and says that the statements of fact contained in the foregoing petition are true and correct.

(S) MINNIE STEIN.

Sworn and subscribed before me this 28th day of March, A. D. 1934.

[SEAL] (S) H. M. VANDERVORT,
Notary Public in and for the District of Columbia.

Notice to Veterans' Administration

I, Vincent A. Baldauf, Chief Attorney, Pittsburgh Regional Office, United States Veterans' Administration, do hereby acknowledge receipt of a copy of the foregoing Petition and accept notice that the same will be presented in open Court on Saturday, March 31, 1934, at 9:30 o'clock A. M.

UNITED STATES VETERANS' ADMINISTRATION,
Pittsburgh Regional Office.
By (S) VINCENT A. BALDAUF, *Chief Attorney.*

Filed June 27th, 1934.

5a In the Court of Common Pleas of Allegheny County, Pennsylvania

No. 1100, April Term 1921

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

Answer to petition for allowance for legal services

To the Honorable the Judges of Said Court:

Personally appeared before me, a notary public in and for the State of Pennsylvania and County of Allegheny, Vincent A. Baldauf, who by me being first duly sworn according to law, deposes and says that he is the Chief Attorney for the Veterans' Administration with offices at 608 House Bldg., Pittsburgh, Allegheny County, Pa., that he is a proper representative of Frank T. Hines, Administrator of the Veterans' Administration, Washington, D. C., and that the following answers to the petition of Minnie Stein are true and correct and are not made for the purpose of delay.

1. The allegations contained in the first paragraph of the petition are admitted.

2. The allegations of the petitioner's second paragraph are admitted.

3. The allegations of the third paragraph of the petition are admitted.

4. The allegations of the petitioner's fourth paragraph are admitted.

5. The allegations of the petitioner's fifth paragraph are admitted; however, it is denied that the guardian, or any representative of Edmund J. Stein, has authority to contract for
6a the expenditure of Edmund J. Stein for the purpose indicated in the petition for allowance for legal services.

6. In further answer to the fifth paragraph, it is averred that section 4, Title I, of Public Act No. 2, 73rd Congress, an Act to maintain the credit of the United States Government, provides that the President shall file, by regulations, requirements as to the payment of fees, etc., and in pursuance to said section 4, the President

issued an Executive Order, being Veterans Regulation No. 10, paragraphs 16 and 17 of which provide as follows:

"At the time of allowance of the claim an award of the attorney's fee, if same is found due, will be made and paid by deduction from the pension allowed, but only to the attorney or agent of record at the time of allowance. The attorney to be entitled must have been admitted to practice before the Veterans' Administration and in good standing at the time of such payment.

"No request of an agent or attorney for consideration of his title to a fee shall be entertained unless the same shall be filed in the Veterans' Administration within six months from the date of the award upon which such fee is claimed."

7. That under said regulations of the President, the Administrator of Veterans' Affairs is authorized to determine and pay fees in pension claims to said persons, agents, and attorneys, and to prescribe rules governing entitlement to and mode of payment of said fees in accordance with sections 111, 114, and 115, Title 38, U. S. C., and in pursuance thereto, Frank T. Hines, the Administrator of Veterans' Affairs, on April 14, 1933, issued Instruction No.
7a 3 to Veterans Regulation No. 10, with reference to recognition of attorneys and agents in the presentation of claims, etc., and under paragraphs 12 and 13, it is provided that:

"When an agent, attorney or other person incurs any expense in the prosecution of a claim for pension, he must file a sworn itemized account of such expense with the Veterans' Administration and secure the approval thereof by the Chief Attorney if the claim is adjudicated in the field or the Solicitor if in central office before demanding or receiving reimbursement from the claimant or pensioner.

"Attorneys or agents shall not contract for, demand, or receive, directly or indirectly, any compensation whatsoever for advice or consultation concerning the pension laws except such compensation as is herein provided, whether a claim has been or is thereafter filed, or no claim is filed, for the person in whose behalf such advice or consultation is had. Any agent or attorney who shall so do shall be regarded as incompetent to prosecute claims before the Veterans' Administration and shall thereby subject himself to suspension or disbarment to practice before the Veterans' Administration."

Under Section D, paragraphs 1 and 2 of Veterans Regulation No. 10, Instruction No. 3, it is provided that:

"A fee not to exceed $10.00 in any original claim or $2.00 in any claim for increase may be allowed for the prosecution of such claim before the Veterans' Administration except where otherwise prohibited by law.

"Any person who may collect or attempt to collect, either directly or indirectly, a fee contrary to the provisions of these instructions, shall be subject to the applicable penal provisions of the pension laws."

8a 8. It is further averred that the application on which the petitioner seeks authority to pay a fee is an application for

an increase and the same is objected to for the reason that it is not in accordance with the law.

9. It is further averred that Hallock C. Sherrard should set forth the amount of his fee and the amount of the expenses incurred in going to Washington, D. C.

Wherefore it is prayed that the prayer of the petitioner be limited to actual expenses incurred, together with a fee of Two ($2.00) Dollars.

(S) VINCENT A. BALDAUF.

Sworn to and subscribed before me this 5th day of April, 1934.

[SEAL] (S) HENRY T. FARR,
Notary Public.

HENRY T. FARR, Notary Public. My Commission expires March 2nd, 1937.

Filed June 27, 1934.

In the Court of Common Pleas of Allegheny County, Pennsylvania

No. 1100, April Term 1921

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

Opinion

ELDER W. MARSHALL, J.: This is an application for the allowance of counsel fees and expenses to Hallock C. Sherrard, Esq., for his services in representing the guardian of Edmund J. Stein, a
9a weak-minded person, in a proceeding at Washington, D. C., before the Board of Appeals of the Veterans' Administration.

The facts are not in dispute. Stein, a World War veteran, has been confined in a Washington hospital for more than ten years past. Originally he was found by the Veterans' Administration to be permanently and totally disabled because of a service-connected disability, and was awarded $100 per month as compensation and $57.50 per month as War Risk Insurance benefits. His case was reviewed under Public Acts Nos. 2 and 78 of the 73rd Congress; ultimately, on January 17, 1934, a Special Board of Review determined his disability was not service-connected. The case was further reviewed by the Board of Veterans' Appeals at Washington, D. C., on March 28, 1934, at which time and place Mr. Sherrard appeared for the guardian and presented witnesses on her behalf. No decision was rendered, however, due to the passage, on the day of the hearing, of Public Act No. 141 of the 73rd Congress. Instead, the case was returned to the Pittsburgh Office of the Veterans' Administration for determination, under the provisions of the statute last mentioned.

Mr. Sherrard now petitions for an allowance of $100 from the existing estate of the incompetent, in payment for legal services and traveling expenses on the occasion of his trip to Washington as re-

cited. The Veterans' Administration opposes such payment, arguing that the Court is powerless to authorize expenditures of any sum in excess of the limited amount prescribed by the Veterans' Administration regulations.

By Executive Order of the President of the United States, dated March 31, 1933, agreeable to Sec. 4 of Public Act No. 2 of the
10a 73d Congress, the Administrator of the Veterans' Administration is authorized to recognize agents, attorneys, or other persons in the presentation of claims to determine and pay fees to such persons, and to prescribe rules governing the amount and mode of payment thereof. On December 7, 1933, the Administrator issued Veterans Regulation No. 10, Instruction No. 3 A, wherein it was provided:

"1. A fee not to exceed $10 in an original claim or $2 in any claim for increase may be allowed for the successful prosecution of such claim before the Veterans' Administration, except where otherwise provided by law."

The Veterans' Administration contends that because of this regulation the Court may not authorize the expenditure of more than $2 for Mr. Sherrard's services. Our judgment is that such contention is clearly erroneous.

In the first place, Mr. Sherrard, in representing the guardian at the Washington hearing, was presenting neither an original claim nor a claim for increase. The original claim of the soldier had long since been presented and determined. Moreover, at the time of the hearing in March 1934, all awards of compensation to Stein had been set aside and hence the guardian's claim was not for increase of an existing allowance. What the guardian, through Mr. Sherrard, was claiming was that the previous award should be reinstated. The language of Regulation No. 10 cannot reasonably be held to apply to a claim of such character. Indeed, the language of the Presidential Order would indicate that the fees which the Veterans' Administrator was authorized to determine and pay were to be payable from awards which the attorney had aided in procuring. In the present case it is not proposed to pay Mr. Sherrard from any
11a monies which may hereafter be awarded to the incompetent.

We can find no statute or regulation fixing the fee to be charged for services in connection with reinstatement of an original award. Even the statute (38 U. S. C. A. 551) which limits to $10 an attorney's fee in a pension case by its terms applies only to fees "for such assistance as may be required in the preparation and execution of necessary papers in any application to the Bureau." This statute is inapplicable since the present is not a case of assisting in the preparation or execution of claim papers.

There is an equally fatal objection to the position assumed by the Veterans' Administration. It is that neither the Administration

nor the United States has any jurisdiction or control over the funds from which the guardian proposes to pay Mr. Sherrard. Such funds belong exclusively to Edmund J. Stein, the incompetent person, and by reason of this Court having adjudicated him to be a weak-minded person, the control and protection of his estate, and the supervision of disbursements by his guardian, are by the Statute (Act of May 28, 1907, P. L. 292) confided to this Court and to this Court alone. All that the Veterans' Administration may do is to appear and be heard as to the legality, necessity and reasonableness of the proposed expenditures: Act of May 24, 1929, P. L. 647. To hold that the Veterans' Administration has power to determine what portion of an incompetent's estate should be paid out for services of counsel in protecting his rights would be to allow that body to impeach the sovereignty of the Commonwealth of Pennsylvania, by invading the jurisdiction of its courts and usurping their functions and prerogatives. Manifestly, the Veterans' Administration has not nor ever can attain such omnipotence.

12a It will not do to argue that because the present estate of the incompetent consists of compensation monies paid by the United States, the impress of Government funds still attaches and the Federal Government can control their application. That theory is not tenable in view of the decisions by the courts of Pennsylvania and of the United States: Saxe v. Board of Revision, 311 Pa. 545; Pentz v. First National Bank, 75 Pa. Super. Ct. 1; Aubrey v. McIntosh, 10 Pa. Super. Ct. 275; Pagel v. Pagel, 54 S. Ct. (U. S.) 497.

We recognize, of course, that the Administrator has power to prescribe whether a particular attorney may or may not practice within the Veterans' Administration, and that he may, as has been threatened, debar Mr. Sherrard if the latter accepts the fee which we shall allow and which the Administrator may conceive to be in violation of Regulation No. 10. It is to be hoped the Administrator will not feel obliged to exact retribution of any character from a gentleman of Mr. Sherrard's standing.

Order

And now, June 27, 1934, it is ordered, adjudged and decreed that leave be granted to Minnie Stein, guardian of the estate of Edmund J. Stein, a weak-minded person, to pay to Hallock C. Sherrard, Esq., from the existing estate of said Edmund J. Stein the sum of $100 for legal services and traveling expenses in appearing before the Board of Veterans' Appeals at Washington, D. C., on March 28, 1934.

BY THE COURT.

Filed June 27, 1934.

13a In the Court of Common Pleas of Allegheny County, Pennsylvania

No. 1100, April Term 1921

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

Exceptions

To the Honorable the Judges of Said Court:

And now comes Vincent A. Baldauf, Esquire, attorney for the Veterans' Administration with offices at Pittsburgh, Pa., a representative of the Administrator of the Veterans' Administration, Washington, D. C., and takes exception to the Opinion and Order handed down by His Honor, Judge Elder W. Marshall, Judge of the Common Pleas Court of Allegheny County, Pa., on June 27, 1934, in which it is ordered, adjudged and decreed that leave be granted to Minnie Stein, guardian of the estate of Edmund J. Stein, a weak-minded person, to pay to Hallock C. Sherrard, Esquire, from the existing estate of Edmund J. Stein, the sum of One Hundred ($100.00) Dollars for legal services and traveling expenses in appearing before the Board of Veterans' Appeals at Washington, D. C., on March 28, 1934.

These exceptions are not filed for the purpose of delaying this proceeding but are filed to the end that this case be decided in accordance with the law and facts. Exceptions are taken to said Order for the following reasons:

1. That the court is without authority to make said Order.
2. That the matter is not properly before the court.

14a 3. That the United States Government in making payment of gratuities can annex such conditions to the gift as it deems necessary, and that the conditions of said gift or gratuity are not being complied with.

4. That the guardian has no greater right than the claimant himself if he were competent.

5. That in view of the facts and the law applicable thereto, the court erred in making its order of June 27, 1934.

(S) Vincent A. Baldauf,
VINCENT A. BALDAUF,
Attorney for Veterans' Administration,
Pittsburgh, Pa.

Filed June 30, 1934.

It is hereby mutually agreed that the foregoing shall constitute the record in this case.

(S) Hallock C. Sherrard,
HALLOCK C. SHERRARD,
Attorney for Estate of Edmund J. Stein.
(S) Vincent A. Baldauf,
VINCENT A. BALDAUF,
Attorney for U. S. Veterans' Administration, Pittsburgh, Pa.

I do hereby certify that a true and correct copy of the above has been served upon His Honor, Judge Elder W. Marshall, of the Common Pleas Court of Allegheny County, on March 5, 1935, who decided this case.

(S) VINCENT A. BALDAUF,
Attorney for Veterans' Administration.

Filed March 5th, 1935.
From the record,
[SEAL] (S) JOHN VOGT, *Prothonotary.*

1b *Docket entries*

No. 159, April Term 1935

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

Appeal of Veterans' Administration

Appeal from the order of Court of Common Pleas of Allegheny County at No. 1100, April Term 1921

September 13, 1934. Appeal and Affidavit filed and writ exit.
Sept. 21/34. Notice of Appeal filed.
April 26/35. Record filed.
April 29/35. Argued.

Decision

July 18, 1935. Decree is affirmed at appellant's costs.
BALDRIDGE, J.
Oct. 2, 1935. Record remitted.
Oct. 8/35. Petition by Attorney for Appellant for leave to have the Prothonotary secure and hold record for a period of 30 days, within which time Apts. may make application to the Supreme Court of the United States for an appeal or certiorari filed in Western District.

Order

Oct. 8, 1935. Petition refused.

BY THE COURT.

For Appellant: Vincent A. Baldauf.
For Appellee: Hallock C. Sherrard.

2b *Docket Entries*

Miscellaneous Docket No. 832A

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

July 27, 1935. Petition by Veterans' Administration for allowance of appeal from Superior Court at No. 159, April Term 1935, filed.
July 29/35. Acceptance of service of ptn. filed.

Order

And now, Aug. 1st, 1935, upon consideration of the within petition a rule is granted on plaintiff to show cause why an appeal should not be allowed as prayed for. Returnable Aug. 14, 1935.

PER CURIAM.

F.

Aug. 1/35. Rule exit.
Aug. 1/35. Acceptance of service of rule.
Aug. 1/35. Filed.

Order

Oct. 1/35. Appeal refused.

PER CURIAM.

For Petitioner: Vincent A. Baldauf.

3b *Assignment of error*

Order

And now, June 27, 1934, it is ordered, adjudged and decreed that leave be granted to Minnie Stein, guardian of the estate of Edmund J. Stein, a weak-minded person, to pay to Hallock C. Sherrard, Esq., from the existing estate of said Edmund J. Stein the sum of $100 for legal services and traveling expenses in appearing before the Board of Veterans' Appeals at Washington, D. C., on March 28, 1934.

By the Court.

4b In the Superior Court of Pennsylvania

No. 159, April Term 1935

In the Matter of Edmund J. Stein, a Weak-Minded Person,

Appeal of Veterans' Administration

Appeal from the order of the Common Pleas Court of Allegheny County, dated June 27, 1934, at No. 1100, April Term 1921.

No. 425

Filed Jul 18, 1935

Opinion by Baldrige, J: Edmund J. Stein, a weak minded person, is now and has been for more than ten years a patient in a hospital at Washington, D. C., where he is maintained at the expense of the United States Government. Stein entered military service on August 7, 1918, and was discharged August 31, 1918. On March 8, 1921, the common pleas court of Allegheny County appointed Mrs. Minnie Stein, his mother, as guardian of her son's property, and, as such, she has received compensation and insurance benefits for his estate. He was found by the Veterans' Administration to be permanently and totally disabled because of service connection disability, and was awarded $100 per month compensation, and $57.50 per month war-risk insurance benefits. His case was reviewed under Public Acts Nos. 2 and 78 of the 73d Congress. On January 17, 1934, a special board of review determined that his disability was not service connection. His case was further reviewed by the Board of Veterans' Appeals at Washington on March 28, 1934, at which place and time Hallock C. Sherrard, Esq., a member of the Allegheny County Bar, appeared for the guardian, and presented witnesses on her behalf. No decision was rendered in this proceeding, due to the passage on the day of the hearing of Public Act No. 141 of the 73d Congress. Under its provisions, the case was re-
5b turned to the Pittsburgh office of the Veterans' Administration for determination.

The guardian petitioned the court of common pleas of Allegheny County, setting forth that compensation to her ward had been cut off, and that she had requested Mr. Sherrard, as her counsel, to make a trip to Washington and present her claim to the Board of Veterans' Appeals; that she agreed to pay him $100 for his services and expenses; that she has in her hands, as guardian, approximately $2,000; and prayed the court to make an order authorizing payment of $100 to Mr. Sherrard. The Veterans' Administration filed an answer to the petition, objecting to the payment of the fee and expenses. After a hearing, the court made a decree, ordering the guardian to pay Mr. Sherrard the sum of $100 for legal services and traveling expenses.

The appellant concedes that this fee is not unreasonable, if such services were rendered other than in the prosecution of a claim before the Veterans' Administration.

The question involved, as stated by the appellant, is: Does the guardian, even though under an order of the court of common pleas, have the right to expend money in excess of that permitted under the acts of Congress and the rules and regulations of the Veterans' Administration for the prosecution of the ward's claim before the Administration?

By an executive order, dated March 13, 1933 (U. S. C. A. 6098, p. 139), the President of the United States, under authority imposed in him under section 4 of Public Act No. 2 of the 73d Congress, authorized the Administrator of the Veterans' Administration to recognize attorneys in the presentation of claims; to determine and pay fees for services rendered; and to prescribe rules governing entitlement to and the amount and mode of payment thereof. On December 7, 1933, the Administrator issued Veterans Regulation No. 10, Instruction 3–A, providing, inter alia, as follows: "1. A fee not to exceed $10.00 in any original claim or $2.00 in any claim for increase may be allowed for the successful prosecution of such claim
before the Veterans' Administration except where otherwise
6b prohibited by law." The appellant insists that this regulation
controls, and that the court exceeded its authority in ordering an expenditure of more than $2 for Mr. Sherrard's services. The learned court below held (1) that the attorney in representing the guardian at the Washington hearing was presenting neither an original claim nor a claim for increase, but was seeking to have a previous award reinstated, and, therefore, he did not come within the regulation above quoted; (2) that it had authority to direct the guardian to pay the attorney a reasonable fee.

Strictly speaking, the services rendered were not within Regulation No. 10, above mentioned. We note in passing that Instruction 3–A indicates that the fees, which the Veterans' Administration is authorized to determine, are to be paid from the award which the attorney has aided in procuring. Section 15 therein provides: "At the time of allowance of the claim an award of the attorney's fee,

if same is found due, will be made and paid by deduction from the pension allowed, but only to the attorney or agent of record at the time of allowance. . . ."

If we assume that the above statutes and regulations are applicable to all claims, whether for an original prosecution, increase, or reinstatement, the appellant is confronted with the more serious question, namely: Does either the Veterans' Administration or the United States have jurisdiction or control of the funds that were paid to a guardian, who was subject to the orders of the court of common pleas of Allegheny County? We think not. By the Act of May 28, 1907, P. L. 292 (50 P. S. § 941 et seq.), the supervision and disbursement of money in the hands of this guardian come within the authority of the common pleas court of Allegheny County. It has ultimate and exclusive power over those matters. The lower court well said: "To hold that the Veterans' Administration has power to determine what portion of an incompetent's estate should be paid out for services of counsel in protecting his rights would be to allow that body to impeach the sovereignty of the Commonwealth of Penn-
7b sylvania, by invading the jurisdiction of its Courts and usurping their functions and prerogatives. Manifestly, the Veterans' Administration has not nor ever can attain such omnipotence."

We recognize that a fund received by a guardian is in the nature of a gratuity to the ward, given by the United States in recognition of meritorious services, and is subject to certain regulations and restrictions imposed by the government; and statutes relating thereto should be liberally construed with a view to promoting their object. However, the general rule relating to exemptions is to be strictly construed: Com. v. Sunbeam Water Co., 284 Pa. 180, 130 A. 405. Nor do we question the power of Congress to protect pension money, and make it inaccessible to the payment of attorney's fees, or exempt it from seizure by creditors, under our state laws, until it shall have passed into the hands of the pensioner: Reiff et al. v. Mack, 160 Pa. 265, 28 A. 699. But the laws and regulations relating thereto do not apply to money after it has passed into the hands of the beneficiary. The weight of authority sustains the proposition that when the transmission of pension money is ended, and the pensioner or his guardian has received it, the government's authority ceases.

McIntosh v. Aubrey, 185 U. S. 122, 125, 22 S. Ct. 561, 46 L. ed. 834, 838, was a case arising in this state. The court said: "We concur, therefore, with the learned judge of the court of common pleas of Pennsylvania that the 'exemption provided by the act protects the fund only while in the course of transmission to the pensioner. When the money has been paid to him it has "inured wholly to his benefit," and it is liable to seizure as opportunity presents itself.'"

In State ex rel. Smith, Attorney General, v. Board of Comrs. of Shawnee County (Kans.), 294 Pac. 915, it was held that the payment of pension or compensation funds to a guardian by the govern-

ment does not leave such funds still in the hands or under the control of the government. The court there said: ". . . the intervention of a guardian does not leave the pension funds still
8b in the hands of the government. . . . but, when paid to the guardian, the title and possession have both passed from the government."

In the recent case of Spicer v. Smith, 288 U. S. 430, 77 L. ed. 875 (1933), the petitioner was a United States soldier in the World War, who suffered mental incompetency, and became entitled to receive war risk insurance and disability compensation from the United States. A guardian was appointed and the United States paid to him the installments due his ward. The money was deposited in a bank which became insolvent. The guardian claimed priority, under Revised Statute § 3466, and demanded payment of his deposit in full. Mr. Justice Butler, delivering the opinion of the court, said: "The guardian, appointed by the county court, was by the laws of the State given the custody and control of the personal estate of his ward and was authorized to collect and receive the money in question. Ky. Stat. § 2030. And unquestionably payment to the guardian vested title in the ward and operated to discharge the obligation of the United States in respect of such installments. [Citing cases.] The provisions for exemption, nonassignability and suspension of payments plainly imply the passage of title from the United States to the veteran."

In Pentz v. First National Bank, 75 Pa. Superior Ct. 1, we held that pension money deposited in a bank by the pensioner and credited to his general account was free from any restriction.

In Saxe, Guardian, v. Board of Revision of Taxes, 107 Pa. Superior Ct. 108, affirmed by the Supreme Court (311 Pa. 545, 166 A. 853), the question involved was whether a pension received from the United States Government by a guardian of an insane World War veteran, consisting of compensation, insurance, maintenance and support allowance, payable to the veteran under the Federal World War Veterans' Act and invested in mortgages by the guardian, was subject to personal property taxation. We sustained the contention that the veteran was not exempt from paying the tax, as exemption ceases when the transit of the money has ended.

No case has been cited, and we have found none, where the
9b facts are similar to those before us; but we think the reasoning in the above-mentioned cases is applicable.

After giving this case careful consideration, we have come to the conclusion that when the money was given to the guardian, appointed by the court, it lost the impress of Government money, and the control of the estate is wholly within the province of the common pleas court.

Decree is affirmed, at appellant's costs.

10b In the Supreme Court of Pennsylvania

No. 882A Miscellaneous Docket

IN THE MATTER OF EDMUND J. STEIN A WEAK-MINDED PERSON

Petition for leave to appeal in accordance with Rule of Court 82

To the Honorable the Chief Justice and Justices of the Supreme Court of Pennsylvania:

The petition of the Veterans' Administration, Appellant, by its attorney, Vincent a Baldauf, who is authorized to act in this matter, respectfully represents:

1. That Edmund J. Stein, the above-named weak-minded person, was in the military service of the United States during the World War from August 7, 1918, to August 31, 1918.

2. That on March 8, 1921, at No. 1100, April Term 1921, the Common Pleas Court of Allegheny County appointed his mother, Mrs. Minnie Stein, as guardian of his estate. Upon her appointment as guardian she entered upon the duties of her trust and received compensation and insurance benefits from the Veterans' Administration for his benefit.

3. That as the result of the passage by Congress of Public Act No. 2 of the 73rd Congress, it was finally determined that he was not entitled to service connection for his disability. The mother, as guardian, appealed said case to the Board of Veterans' Appeals, Washington, D. C., and Hallock C. Sherrard, Esquire, admitted to practice as a pension attorney before the Veterans' Administration, appeared in her behalf on March 28, 1934, and on the same
11b date, Mrs. Minnie Stein, the guardian, executed a petition for allowance for legal services and expenses, for prosecuting claim before the Veterans' Administration, a copy of which appears on Page 2a to 4a, inclusive, of the Record herewith attached. The Veterans' Administration, by your petitioner, answered said petition as appears in the Record on Page 5a and 8a, inclusive, in which it was asked that the prayer of the petitioner for counsel fees be denied for the reason that the proposed fee was in excess of that permitted by the Acts of Congress and rules and regulations of the Veterans Administration for the prosecution of said claim.

4. That the Common Pleas Court of Allegheny County on June 27, 1934, handed down an Opinion and Order as will appear in the Record on Page 8a to 12a, inclusive, allowing said fee. In the Opinion of the Common Pleas Court mention is made of the fact that Hallock C. Sherrard in representing the guardian was presenting neither an original claim nor a claim for increase and that the money paid by the United States to the guardian had lost its impress as Government funds, all of which was not at issue nor germane to the question of law at issue.

5. That on September 13, 1934, the Veterans' Administration, the Appellant, took an appeal to the Superior Court of Pennsylvania and the same was argued before the Superior Court at Pittsburgh, Pa., on Monday, April 29, 1935, and on July 19, 1935, the Superior Court of Pennsylvania handed down its decision affirming the Decree at Appellant's costs, a certified copy of which is hereto attached and made a part of the petition.

6. It is averred by the petitioner, the Appellant, that the Superior Court did not decide the question before it, and was paradoxical in its legal conclusions. That the principle of law involved in this case will affect in excess of 80,000 guardianship cases in the United
12b States, and therefore, it is paramount and of the utmost importance that a decision by the Court of the last resort of the State of Pennsylvania be had.

7. That the question involved concerns the interpretation of the various Acts of Congress, particularly Public Act No. 2 of the 73rd Congress. That the services rendered by Hallock C. Sherrard are for the prosecution of a pension claim before the Veterans' Administration and is not for usual services by an attorney to a guardian. That Hallock C. Sherrard, Esquire, has been admitted to practice before the Veterans' Administration and as such is bound by the rules governing fees and conduct of attorneys admitted to prosecute claims. See U. S. vs. Van Leuven, 63 Fed. 52, as set forth on Page 26 of the Appellant's Brief, a copy of which is hereto attached and made part of the petition. The appeal was taken to the Superior Court by the Veterans' Administration for the reason that the proposed fee is in excess of that permitted to be charged by the various Acts of Congress and rules and regulations of the Veterans' Administration in prosecuting pension claims of veterans before the Veterans' Administration.

8. It is alleged by Appellant that:

a. The Superior Court erred in not passing upon the question before it which question is stated in the Opinion of the Superior Court on Page 2 and which is as follows: "Does the guardian, even though under an order of the court of common pleas, have the right to expend money in excess of that permitted under the acts of Congress and the rules and regulations of the Veterans' Administration for the prosecution of the ward's claim before the Administration?"

b. The Superior Court erred in finding that the services rendered were not within the Acts of Congress and the rules and regulations of the Veterans' Administration.

13b c. The Superior Court erred in finding that there was no exception to the sole jurisdiction of the Common Pleas Court supervision of the disbursement of money in the hands of a guardian.

d. The Superior Court's Opinion is inconsistent for the reason that it admits that Congress has the right to protect the pension money and make it inaccessible to the payment of attorney fees. For the purpose of this petition, it is not denied that the fund

paid by the Government loses its impress upon the payment of funds to the guardian. It is, however, averred that even after the pensioner receives his money it is his own and he may do with it what he pleases, except to pay to his agent or attorney any greater sum than $10.00, directly or indirectly. See U. S. vs. Moyer, 15 Fed. 411, Page 417, as appears on Page 27 of the Appellant's Brief.

e. It is averred by the petitioner that if the decision of the Superior Court is permitted to stand it will be impossible for the Veterans' Administration to protect veterans entitled to gratuities from the United States Government, and it is averred that the Superior Court erred in holding that the laws and regulations relating thereto do not apply to money after it has passed into the hands of the pensioner. While it is admitted that when the money paid to the pensioner by the Veterans' Administration has "inured wholly to his benefit," as appears in the Opinion of the Superior Court on Page 5, it is averred that there is one exception and that is that the pensioner cannot pay from said fund or from any other fund a fee in excess of that permitted by the Acts of Congress and the rules and regulations of the Veterans' Administration for the prosecution of his pension claim.

14b f. The Court erred in finding that there has been no case cited where the facts are similar before us, and your petitioner calls to your attention the case of Shinberg's Estate as appears on Page 24 of the Appellant's Brief, U. S. vs. Moyer, as appears on Page 25, U. S. vs. Ryckman, as appears on Page 5, in which the Court held in Part: "It cannot, on any pretext, be lawfully diverted directly or indirectly;" and in Calhoun vs. Massie, 253 U. S. 170, as appears on Page 6 of the Appellant's Brief, the Court held:

"'For nearly three-quarters of a century Congress has undertaken to control in some measure the conditions under which claims against the government may be prosecuted. Its purpose has been in part to protect just claimants from extortion or improvident bargains, and in part to protect the Treasury from frauds and imposition."

Nor has the Superior Court taken into consideration Sections 111 to 116, inclusive, Title 38, U. S. C. A., Chapter 2, etc., as appears on Page 7 of the Appellant's Brief.

g. The Court erred in not finding that the fee could not be paid from funds in the hands of the guardian or from any other source, and in not finding that the statutes and regulations are applicable to all claims before the Veterans' Administration in accordance with Regulation No. 10, and its various subdivisions, particularly Instruction No. 3–A, Section D, Paragraph 3, as appears on Page 23 of the Appellant's Brief, and not as indicated by the Superior Court's Opinion on Page 3, it is averred that the manner of payment of said fee should be made as set forth in Appellant's Brief on Page 19, Paragraph 15.

9. It is averred that the Superior Court as the result of the able argument of Hallock C. Sherrard was lead to believe that the ques-

tion before the court was whether or not the fund in question
15b had lost the impress of Government money (said theory while not at issue is advanced on Page 2 of the Appellee's Brief a copy of which is attached to this petition) as is clearly indicated by the last paragraph of the Court's Opinion. This question was not before the court; however, for the purpose of this petition, it is admitted that the fund in question has lost the impress of Government money. The sole question before the court is whether or not a pensioner or his representative even though under a court order can expend money in excess of that permitted under the Acts of Congress and the rules and regulations of the Veterans' Administration for the prosecution of a claim for pension benefits before the Veterans Administration regardless of from what fund the same may be paid.

10. It is averred that the Veterans' Administration is not questioning the right of the Common Pleas Court to supervise the estate of the incompetent in accordance with the laws of the State of Pennsylvania. However, it is averred that Hallock C. Sherrard, Esquire, cannot be paid more than that permitted by the Acts of Congress and the rules and regulations of the Veterans' Administration, regardless of from what fund the same is paid, for the prosecution of a veteran's claim for pension before the Veterans' Administration.

Wherefore, your petitioner prays for the reasons set forth above that your Honorable Court will allow an appeal from the Decree of the Superior Court as above set forth to the Supreme Court of the State of Pennsylvania and the Appellant will ever pray.

(Signed) Vincent A. Baldauf

VINCENT A. BALDAUF,
Chief Attorney for Appellant,
the Veterans' Administration,
521 New Federal Building, Pittsburgh, Pa.

16b STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, personally appeared, Vincent A. Baldauf, Esquire, who by me being first duly sworn according to law, deposes and says that he is the Attorney for the Veterans' Administration and as such authorized to proceed for the Veterans' Administration, and that the statements contained in the foregoing petition are true and correct as he verily believes and are not made for the purpose of delay but are made to the end that this case be decided in accordance with the law and facts.

(S) VINCENT A. BALDAUF.

Sworn to and subscribed before me this 27 day of July, 1935.

(S) PIER DANNALS, *Prothonotary.*

Filed July 27, 1935.

17b In The Supreme Court of Pennsylvania

No. 832A Miscellaneous Docket

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

Acceptance of service

I, Hallock C. Sherrard, Esquire, do hereby accept service and copy of Petition for Leave to Appeal to The Supreme Court in Accordance with Rule 82 in the above entitled case.

(S) HALLOCK C. SHERRARD.

Filed July 29, 1935.

18b In The Supreme Court of Pennsylvania, Western District

Miscellaneous Docket No. 832A

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

Veterans' Administration, Apt.

Appeal from the ——— of the County of ———, No. —, ——— Term, 19—.

Certified from the Record July 27, 1935, Petition for allowance of appeal from Superior Court filed.

Order

And Now, Aug. 1st, 1935, upon consideration of the within petition a rule is granted on plaintiff to show cause why an appeal should not be allowed as prayed for. Returnable Aug. 14, 1935.

PER CURIAM,

F.

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh, Pa., this first day of August 1935.

PIER DANNALS, *Prothonotary.*

Service accepted Aug. 1, 1935.
HALLOCK C. SHERRARD,
Attorney for Appellee.

19b Order

And now, Aug. 1st, 1935, upon consideration of the within petition a rule is granted on plaintiff to show cause why an appeal should not be allowed as prayed for. Returnable Aug. 14, 1935.

PER CURIAM,

F.

Oct. 1/35.
Appeal refused.

PER CURIAM,

F.

20b *Certificate of Record*

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

I, Pier Dannals, prothonotary of The Supreme Court of Pennsylvania, for the Western District thereof, do hereby certify that the foregoing Record, pages 1a to 14a, inclusive, and 1b to 19b, inclusive, is a true and faithful copy of the Record and Proceedings of The Supreme Court of Pennsylvania, in the Western District aforesaid, in a certain suit therein pending, wherein the Veterans' Administration is appellant in re Matter of Edmund J. Stein, a weak-minded person.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said The Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this eleventh day of October, in the year of our Lord one thousand nine hundred and thirty-five.

PIER DANNALS, *Prothonotary.*

21b I, Robert S. Frazer, Chief Justice of The Supreme Court of Pennsylvania, do certify that Pier Dannals was at the time of signing the annexed attestation and now is prothonotary of the said The Supreme Court of Pennsylvania, in and for the Western District, to whose acts as such full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 11th day of October, in the year of our Lord one thousand nine hundred and thirty-five.

ROBERT S. FRAZER.

I, Pier Dannals, prothonotary of The Supreme Court of Pennsylvania in and for the Western District, do certify, that the Honorable Robert S. Frazer, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now Chief Justice of The Supreme Court of Pennsylvania; to whose acts as such full faith and credit are and ought to be given, as well in

Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said The Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this eleventh day of October, in the year of our Lord one thousand nine hundred and thirty-five.

PIER DANNALS.

U. S. GOVERNMENT PRINTING OFFICE

22 Supreme Court of the United States

Order allowing certiorari

Filed February 3, 1936

The petition herein for a writ of certiorari to the Superior Court of the State of Pennsylvania is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1936

FILE COPY

DEC 27 1935
CHARLES ELMORE CROPLEY
CLERK

No. 659

In the Supreme Court of the United States

OCTOBER TERM, 1935

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS (UNITED STATES VETERANS' ADMINISTRATION), PETITIONER

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA SITTING AT PITTSBURGH AND BRIEF IN SUPPORT THEREOF

JAMES T. BRADY,
Solicitor,

VINCENT A. BALDAUF,
Chief Attorney, Veterans' Administration,
Pittsburgh, Pennsylvania,
Counsel for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. —

FRANK T. HINES, ADMINISTRATOR OF VETERANS' Affairs (United States Veterans' Administration), petitioner

IN THE MATTER OF EDMUND J. STEIN, A WEAK-Minded Person

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA SITTING AT PITTSBURGH AND BRIEF IN SUPPORT THEREOF

To the Honorable the CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Frank T. Hines, prays that a writ of certiorari issue to review the judgment of the Superior Court of Pennsylvania which became final on October 1, 1935.

In support thereof petitioner respectfully represents to this Honorable Court that petitioner is and

at all times material hereto was the Administrator of Veterans' Affairs, an Officer of the United States, the executive head of the establishment known as Veterans' Administration, provided for by Public Law No. 536, 71st Congress, 46 Stat. 1016, and as such charged with the duties and vested with the powers prescribed in certain Acts of Congress hereinafter mentioned, pertaining to (inter alia) the supervision of guardians of the estates of mentally incompetent veterans of the World War. The Veterans' Administration is successor to the Veterans' Bureau and the Pension Bureau; and the Administrator of Veterans' Affairs is successor to the Director of the Veterans' Bureau and to the Commissioner of Pensions. Section 2, Public No. 536, 71st Congress, 46 Stat. 1016.

ACTION IN THE STATE COURTS

On June 27, 1934, the Court of Common Pleas of Allegheny County, Pennsylvania, entered an order authorizing Minnie Stein, Guardian of Edmund J. Stein, "A weak-minded person" who was a veteran of the World War and a beneficiary of the Veterans' Administration, to pay Hallock C. Sherrard, Esq., from the estate of said Edmund J. Stein the sum of $100.00 "for legal services and traveling in appearing before the Board of Veterans' Appeals at Washington, D. C., on March 28,

1934." This order was entered after hearing on the objections of the Administrator of Veterans' Affairs to the guardian's application. Appeal was prosecuted by the Administrator of Veterans' Affairs to the Superior Court of Pennsylvania, which affirmed the decree below on the merits. Thereafter in due time in conformity with the law of Pennsylvania and the rules of the Supreme Court of Pennsylvania, the Administrator of Veterans' Affairs filed in said Supreme Court a petition for leave to appeal. On October 1, 1935, said petition for leave to appeal was refused by the Supreme Court of Pennsylvania by endorsement on the petition therefor "Appeal refused. Per Curiam." The effect of the action taken is that the judgment of the Superior Court of Pennsylvania became final on October 1, 1935. Hence said Superior Court of Pennsylvania is the highest Court in said State having jurisdiction of this cause.

This Petition for Writ of Certiorari is filed within three months of the time when said judgment became final and there is presented herewith a certified copy of the entire record and proceedings, including those in the Superior Court of Pennsylvania (at Pittsburgh).

This Petition for Writ of Certiorari is filed under the provisions of Title 28, U. S. Code, Section 344, Paragraph (b).

II

SUMMARY AND BRIEF STATEMENT OF THE MATTERS INVOLVED

QUESTIONS PRESENTED

The ultimate questions here involved are—(a) whether a State Court in which the guardianship of an incompetent veteran is pending may validly direct the payment of a fee for legal services rendered at the request of the guardian in connection with said veteran's pension claim, which fee is in excess of the maximum fee prescribed by the Acts of Congress and Executive Regulations issued pursuant thereto, and (b) whether a fee for such services may be charged or paid in a mode or manner other than as prescribed by Paragraph XVII of Veterans' Regulation No. 10 and Section 114 of Title 38, U. S. Code, viz: directly by the Veterans' Administration to the attorney if and when allowed by the Veterans' Administration.

If the fee sought to be charged in this case, and which was authorized by the court below, were charged in connection with the claim of a competent veteran, it would violate the provisions of the Acts of Congress in question and the Regulations pursuant thereto, and because the amount thereof exceeds the maximum fixed by applicable Regulation would subject the attorney to criminal liability. Petitioner's position is that the same situation exists here, notwithstanding that the veteran in question is incompetent, and that the State

Court has no power to authorize payment in contravention of such Federal statutes.

FACTS AND STATUTES INVOLVED

The amount involved in this individual case is small, but the question of law is one of great importance in that petitioner is required by law to supervise the administration of approximately 80,000 guardianships of beneficiaries to whom payments are being made by the Veterans' Administration. A substantial portion of these may involve the same question now presented. In addition to the number of cases in which there may be potentially involved the same question presented here, there is to be considered the question of public policy involved. This Court's determination of the question is essential in order that the administrative officers of the Government may properly perform their functions in regard to the subject matter, and in order that the Congress may be fully advised as to necessity for clarifying legislation. Finally, unless such review is had the insane veteran in the instant case will be deprived of a right, privilege, or immunity believed granted him by Federal Statutes.

RIGHT OF PETITIONER TO APPEAR

The petitioner appeared in the court below and contested the guardian's application and appears here by virtue of the duties imposed upon peti-

tioner by certain Acts of Congress hereinafter mentioned.

Paragraph 2 of Section 21, World War Veterans' Act, as amended by Act of July 2, 1926 (44 Stat. 792), Section 450, Title 38, U. S. Code, 43 Stat. 613, and as amended by Public Law No. 262 of the 74th Congress, approved August 12, 1935, 49 Stat. —, provides in substance that the Administrator of Veterans' Affairs shall appear in the proper court and present any matter in respect to the administration of the trust involving moneys paid by the United States to a guardian or other fiduciary of beneficiaries of the Veterans' Administration who are not sui juris; and in general authorizes the Administrator to supervise, through the courts, the administration of the ward's estate. Specifically, as concerns fees, it provides:

> Whenever it appears that any guardian, * * * has * * * paid, or is attempting to * * * pay, fees, * * * that are * * * in excess of those allowed by law for the duties performed or expenses incurred, * * * the Administrator is hereby empowered by his duly authorized attorney to appear in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters.

So far as material to this case, said Paragraph 2, of Section 1, of Public No. 262, 74th Congress, is substantially the same as the provisions of Para-

graph 2 of Section 21, World War Veterans' Act, 1924, as amended, 43 Stat. 613, 44 Stat. 792, Section 450, Title 38, U. S. Code. These paragraphs are printed in full on pages 23, 24, and 25 hereof.

Section 788 of Title 20, Purdon's Pennsylvania Statutes (Pennsylvania Laws 647, Section 1, April 24, 1929), requires notice to the Veterans' Administration of applications for appointments of guardians for beneficiaries thereof and upon the filing of petitions or accounts by any fiduciary thereof, and provides "in all such cases the United States Veterans' Bureau or its successor shall be a party in interest * * *." This Section of the Pennsylvania Statutes is printed in full on pages 25 and 26 hereof.

FACTS THE BASIS OF CONTROVERSY

On June 27, 1934, the guardian filed in the Court of Common Pleas, which had appointed the guardian in 1921 and in which court such proceedings were pending, an application for authority to pay Hallock C. Sherrard, Esq., an attorney at law of Pittsburgh, Pennsylvania, the sum of $100.00 "for his services and expenses and making the trip to Washington, D. C., to represent her in her claim for her said son's estate before said Board of Veterans' Appeals" (R. 2), reciting as a basis for such application that under new legislation of Congress "enacted about a year ago the compensation of $100.00 per month payable on account of the permanent and total disability of said veteran has

been cut off. * * * That a hearing on this matter before the Board of Veterans' Appeals at Washington, D. C., has been set for Wednesday, March 28, 1934" (R. 2). Order as prayed for was entered by said Court of Common Pleas on June 27, 1934 (R. 8), over the objections (R. 3) of petitioner timely filed as required by the law of Pennsylvania. Appeal was duly prosecuted from such order to the Superior Court of Pennsylvania (R. 11).

PETITIONER'S OBJECTIONS TO CLAIM, AND STATUTORY BASIS THEREFOR

The objections interposed by the Administrator of Veterans' Affairs to the allowance of the disbursement sought by the guardian were and are based on the inhibitions contained in the Executive Order ("Veterans' Regulation No. 10") of the President of the United States dated March 31, 1933, issued pursuant to Sections 4 and 7 of Public Law No. 2 of the 73d Congress entitled "An Act to Maintain the Credit of the United States Government", the "Instructions" issued by the Administrator of Veterans' Affairs in conformity with such Executive Order (48 Stat. 8, 38 U. S. Code 701), and pursuant to the authority vested in him by law, and Sections 111, 114, and 115 of Title 38, U. S. Code.

Section 4 of Public Law No. 2, 48 Stat. 9, 38 U. S. Code 704, provided in substance that the President, by regulation, shall prescribe the dates

when the several wars began and ended, and certain conditions precedent for entitlement to pensions, the nature and extent of proofs in support of claims of different classes, etc.

Section 7 of Public Law No. 2, 48 Stat. 9, 38 U. S. Code 707, provided that the Administrator of Veterans' Affairs should administer the provisions of the law under the general direction of the President and in accordance with "Regulations" to be issued by the President, and should have the powers and authority provided in certain sections of the United States Code therein enumerated "and such other sections of Title 38, U. S. C., as relate to the administration of the laws granting pensions."

Sections 4 and 7 are printed in full on pages 26 and 27 hereof.

Section 111 of Title 38, U. S. Code, provides in substance that no person shall receive compensation for services in prosecuting a claim for pension except such as the Commissioner of Pensions (now Administrator of Veterans' Affairs) shall direct to be paid and not exceeding $25.00.

Section 114 contains the form of agreement for fees in pension cases, also certain administrative and penal provisions, and fixes a penalty for collecting a fee in any amount or manner other than as provided therein.

Section 115 provides that the Commissioner of Pensions shall have the power to refuse to recog-

nize any contract for fees where undue advantage had been taken of the claimant.

The functions, powers, and duties conferred by law upon the Commissioner of Pensions are vested in the Administrator of Veterans' Affairs. Section 2, Public 536, 71st Congress, 46 Stat. 1016.

Said sections 111, 114, 115 of Title 38, U. S. Code, and 2 of Public 536, are printed immediately following this Petition for Certiorari (pages 27, 28, 29, 30, and 31).

That part of the Executive Order material hereto is found in paragraphs XVI and XVII, "Veterans' Regulation No. 10", which provide in substance that the Administrator of Veterans' Affairs is authorized to recognize representatives of the American Red Cross, the American Legion, and other organizations in presentation of claims where no fee is to be charged for such representation, and that specific power of attorney shall be filed in such cases; that he may also recognize agents and attorneys in the presentation of claims, and as a condition precedent may require certain showing as to character and qualifications, and might suspend or exclude those from practice who may be guilty of certain misconduct therein described.

> The Administrator of Veterans' Affairs is further authorized to determine and pay fees in pension claims to such persons, agents and attorneys, and to prescribe rules govern-

ing entitlement to and the amount and mode of payment of such fees in accordance with sections 111, 114 and 115, Title 38, U. S. C.

These paragraphs of Veterans' Regulation No. 10 are printed in full on pages 31, 32 and 33 hereof.

Said Executive Order (Veterans' Regulation No. 10) has the full force and effect of law until modified or repealed by the Congress, Section 19, Public No. 2, 73d Congress, 48 Stat. 12.

Section D, paragraphs 1–5 of *Instruction* No. 3–A issued by the Administrator of Veterans' Affairs, pursuant to said Veterans' *Regulation* No. 10, and by virtue of authority vested in him by law (Section 7, Public No. 2, supra), provides in substance that a fee not to exceed $10.00 in an original claim may be allowed for the successful prosecution of such claim; and that the presentation of a claim before a special review board, or the Board of Appeals, shall be considered an original claim for the purpose of a fee, with a similar provision as to cases wherein payments were discontinued pursuant to Public Law No. 2 (as in the Stein case).

In short if, as petitioner contends, the Statutes, Regulations and Instructions hereinabove indicated are applicable to this case, $10.00 was the maximum fee the attorney could lawfully accept or contract for, and such fee must be allowed and paid, if at all, directly to the attorney by the Vet-

erans' Administration. He could not lawfully receive it otherwise. Expenses are payable only as provided in Section C, paragraph 12 of said Instruction.

Section C, paragraph 12, and Section D of said Instruction are printed in full on pages 33 and 34 hereof.

It will be observed that the Executive Orders issued by the President pursuant to the Act of Congress are denominated "Veterans' Regulations", whereas the directions issued by the Administrator of Veterans' Affairs in conformity with said Executive Orders (Regulations) are denominated "Instructions."

So far as material to this case, the effect of said Executive Orders (Regulations) and the Instructions issued by the Administrator of Veterans' Affairs pursuant thereto with respect to limiting the amount of the fee, is in substance the same as the provisions of Section 500 of the World War Veterans' Act, 1924 (43 Stat. 628, 38 U. S. Code 551), printed on page 35 hereof, and the pension statutes mentioned above.

Mr. Sherrard, the attorney whose fee the guardian sought to pay, was at all times material to this case duly admitted to practice before the adjudicating bodies of the Veterans' Administration, having been so admitted upon his application. He appeared before the Board of Veterans' Appeals on behalf of the incompetent veteran mentioned

and in the capacity of attorney for the veteran. It was for these services and the trip made to Washington for the purpose of making such appearance that payment of the fee in question was sought. No claim for such fee, or expenses, was filed with, nor denied by, the Veterans' Administration.

It is petitioner's position that by reason of the Statutes of the United States and the Regulations of the President issued in accordance with Public Law No. 2, as hereinabove stated, the fee that may be charged, paid, or received under the circumstances described is limited to the sum of $10.00. This is so because of the positive provisions of said Statutes and the Regulations issued in conformity therewith. Contracting for, demanding, or receiving of a fee exceeding the amount limited would constitute a violation of the penal provisions indicated. Hence, the contract is void. It is well-settled law that a contract which is illegal or against public policy will not be enforced. (See *Waychoff* v. *Waychoff,* 163 Atl. 670, Pennsylvania). The contract which the Superior Court permitted to be enforced was and is illegal, and hence that court erred in awarding a money recovery to the attorney in accordance with the terms of such illegal contract. Such fee would be illegal irrespective of the existence or nonexistence of a contract therefor. This follows from the fact that the statute prohibits the *charging or receiving* of a fee

in excess of $10.00. (See *Oscanyan* v. *Winchester Repeating Arms Company,* 103 U. S. 261). In that case this court quoted with approval the following language from the decision in the case of *Hall* v. *Coppell,* 7th Wall. 542:

> The principle to be extracted from all the cases is, that the law will not lend its support to a claim founded upon its violation.

It follows that the State Court erred in authorizing payment of the fee.

THE ERROR RESPECTING MODE OF PAYMENT

What has been said relates primarily to the error of the courts below in allowing a fee exceeding *in amount* that limited by the Federal law. There is an additional reason why the allowance of such fee was error, irrespective of the amount thereof, to wit: That allowance and payment of *any* fee must be by the Veterans' Administration directly to the attorney. This is the "mode" of payment prescribed under rules made by the Administrator of Veterans' Affairs (paragraphs 13, 14, and 15 of Section C of "Instructions No. 3–A" copied on page 36 hereof). Said Section C relates to the rules of practice governing attorneys who appear before the adjudicating bodies in the Veterans' Administration as did Mr. Sherrard in this case. Said "Instruction" was promulgated by the Administrator pursuant to authority contained in paragraph XVII, Veterans' *Regulation* No. 10 (copied on page 32 hereof). The language of said

Regulation in this respect is the same in effect as that contained in Section 114, Title 38, U. S. Code (page 28 hereof). That part of said Section 114 relating to the "mode" or "manner" of payment is in substance the same as Section 4 of Chapter 181, 23 Stat. 99 (Act of July 4, 1884) amplifying somewhat the provisions of Sections 4768–9, Revised Statutes. The Act of July 4, 1884, expressly repealed the Act of June 20, 1878, Chapter 367, 20 Stat. 243, which had made Sections 4768–9, Revised Statutes, inapplicable to claims filed subsequent to June 20, 1878, and repealed Section 4785 which forbade fees other than as authorized by the Commissioner of Pensions. Said Act of 1878 provided, however, that no fee in excess of $10.00 should be demanded or received for legal services in a pension case. Section 4785, Revised Statutes, was reenacted and amended by the Act of July 4, 1884, evidently because during the intervening period after the enactment of the Act of June 20, 1878, experience demonstrated that in order to effectually carry out the policy of Congress in limiting attorneys' fees, it was necessary to require the payment thereof to be made direct to the attorney by the then Pension Bureau (now Veterans' Administration). It is another illustration of the well-settled rule that the legislative body may and indeed must determine the practical methods of carrying the prescribed policy into effect. Said Statutes are copied on pages 37, 38, and 39 hereof.

As indicated, the direct method of payment of a limited fee by the Pension Bureau, prescribed finally by the Act of July 4, 1884, has been brought forward and is embodied in Section 114 of Title 38, U. S. Code, and in the "Regulation" issued by the President under the Act of March 20, 1933, and is reflected in the "Instructions" issued by the Administrator pursuant to said Statute and Veterans' Regulation No. 10 (pages 33 and 36).

It seems clear, therefore, that the State Court erred in authorizing payment of the fee not only because the amount thereof exceeded that limited by the Federal Statute but also because the mode of payment of any fee is prescribed by the Federal Statute and does not include the mode or manner adopted in this case, to wit: payment by the veteran's guardian direct to the attorney under an order of the court having jurisdiction of the guardianship of the incompetent veteran.

JURISDICTION

This Court has jurisdiction, as provided in Title 28, U. S. Code, Section 344, paragraph (b), to review, by Certiorari, the action of the court below which refused to give effect to the exercise of the authority vested in the President as above indicated and refused to give effect to the right, privilege, or immunity of the incompetent ward which right, privilege, or immunity arises under a Statute of the United States, and which was specially set up and claimed in his behalf pursuant to the aforesaid Federal Statutes.

III

ASSIGNMENTS OF ERROR

The Superior Court of Pennsylvania erred in holding that:

1. The United States had no "jurisdiction or control" of pension money paid to a guardian of an incompetent veteran in respect to disbursements sought to be made by such guardian for attorneys' fees exceeding in amount fees permitted under the applicable Federal Statutes and Executive Regulations pursuant thereto.

2. The court in which the guardianship proceedings were pending had "ultimate and exclusive power" over the fixing and allowing of such fees from pension funds in the hands of the guardian of an incompetent veteran, contrary to the provisions of the Federal Statutes and Executive Regulations issued pursuant thereto.

3. The question here presented is determinable by inquiry as to the passing of title to the funds and a determination that title thereto had passed from the United States to the guardian or the ward.

4. There is no Federal law or Regulation applicable to this case.

IV

REASONS FOR ALLOWANCE OF THE WRIT

Petitioner respectfully represents that the Writ of Certiorari should issue because: (1) the Superior Court of Pennsylvania in reaching its conclusions erroneously decided certain Federal questions

adversely to petitioner's contentions, and, it is believed, contrary to applicable principles and decisions of this Court; (2) there is involved the proper construction of certain Federal Statutes with the administration of which petitioner is charged by law and the proper construction of which may affect a large number of cases similar to the present, potentially, a substantial portion of approximately 80,000 cases; (3) the decision of the Superior Court denied the insane veteran beneficiary a right, privilege, or immunity granted him by the Federal Statutes.

The Federal questions erroneously decided by the Superior Court as aforesaid were:

FIRST. That the United States has no POWER to limit or control the amount that may be paid for attorneys' fees for services in presenting a pension claim when such fees are sought to be paid out of payments formerly made to the veteran's guardian, and, conversely that, therefore, the State Court having jurisdiction of the guardianship may, without reference to the Federal Statutes or Executive Regulations issued pursuant thereto, fix the amount of such attorneys' fees without limit.

SECOND. That even if the *power* of the United States exists, the Statutes and Executive Regulations pursuant thereto *did not purport to limit the attorneys' fees in connection with the representation of a claimant for pension where such claimant is under guardianship* and the attorney's fee in

question is authorized by the State Court having jurisdiction of the guardianship, thus erroneously construing the Federal Statute and the Executive Regulations pursuant thereto.

THIRD. That there is no statute or regulation which purports to fix the fee to be charged for services in connection with *reinstatement of an original claim* (such as Stein's claim).

It will be borne in mind that the services for which the attorneys' fees were charged (and allowed by the State Court) in this case were not in any sense for professional services in connection with the initiating or management of the guardianship proceedings in the State Court at all, but the fee was for services rendered by an attorney at the request of the guardian in connection with the assertion of a claim for pension alleged to be payable to the incompetent veteran. The veteran had been receiving a pension (compensation) for some years and payment thereof was discontinued pursuant to the provisions of Public Law No. 2, approved March 20, 1933. The hearing was before a Board of Appeals existing within the Veterans' Administration whose official duty it was to adjudicate such claims.

Petitioner insists that—

(a) the United States has the power to limit by law attorneys' fees chargeable for professional services in connection with the advocacy of claims for pension pending before adjudicatory bodies

in the Veterans' Administration, irrespective of whether such claims are asserted on behalf of competent or incompetent claimants, with or without guardians,

(b) the proper construction of the Federal Statutes drawn in question and the Executive "Regulations" issued pursuant thereto, leads to the conclusion that such regulation and limitation of fees has in fact been undertaken by the United States pursuant to the power aforesaid,

(c) such laws and regulations are applicable to this case,

(d) the attorney's fee may not be allowed by the court and paid by the guardian direct to the attorney in contravention of the Federal Statutes and Regulations thereunder, which require the allowance thereof to be made by the Veterans' Administration and paid by it direct to the attorney.

(e) in view of the power and the exercise thereof indicated, the State Court erred in authorizing and directing the guardian to pay an attorney's fee in excess of that limited by the Federal Statutes and Regulations in question.

Attached hereto is petitioner's brief in support of this Petition for Review to which reference is respectfully made for the authorities in support of such Petition.

WHEREFORE, your petitioner respectfully requests that this Court issue a Writ of Certiorari directed to the Superior Court of Pennsylvania

(at Pittsburgh) to certify and send to this Court a full and complete transcript of the record herein, to the end that the case may be reviewed and determined by this Court as provided by law, and that the decision of said Superior Court of Pennsylvania may be reversed and such other and further relief as may be appropriate in the premises, may be granted, and your petitioner will ever so pray.

JAMES T. BRADY,
Solicitor.
EDWARD E. ODOM,
Assistant Solicitor.
Y. D. MATHES,
Assistant Solicitor, Veterans' Administration, Washington, D. C.
VINCENT A. BALDAUF,
Chief Attorney, Veterans' Administration, Pittsburgh, Pennsylvania.

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PARAGRAPH 2 OF SECTION 21, WORLD WAR VETERANS' ACT, AS AMENDED BY ACT OF JULY 2, 1926, 44 STAT. 792

Whenever it appears that any guardian, curator, conservator, or other person is not in the opinion of the director properly executing the duties of his trust or has collected or is attempting to collect fees, commissions, or allowances that are inequitable or are in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then and in that event the director is hereby empowered by his duly authorized attorney to appear in the court which has appointed such fiduciary and make proper presentation of such matters to the court: *Provided,* That the director in his discretion may suspend payments to any such guardian, curator, conservator, or other person who shall neglect or refuse, after reasonable notice, to render an account to the director from time to time showing the application of such payments for the benefit of such minor or incompetent beneficiary.

Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment or removal of any guardian, curator, conservator,

or other person legally vested with the care of the claimant or his estate, or in connection with the administration of such estates by such fiduciaries, when such payment is authorized by the director.

PARAGRAPH 2 OF SECTION 21, WORLD WAR VETERANS' ACT, AS AMENDED BY PUBLIC NO. 262, 74TH CONGRESS, 49 STAT. ——

Whenever it appears that any guardian, curator, conservator, or other person, in the opinion of the Administrator, is not properly executing or has not properly executed the duties of his trust or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then and in that event the Administrator is hereby empowered by his duly authorized attorney to appear in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters: *Provided,* That the Administrator, in his discretion, may suspend payments to any such guardian, curator, conservator, or other person who shall neglect or refuse, after reasonable notice, to render an account to the Administrator from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the

estate according to law: *Provided further,* That the Administrator is hereby authorized and empowered to appear or intervene by his duly authorized attorney in any court as an interested party in any litigation instituted by himself or otherwise, directly affecting money paid to such fiduciary under this section.

Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any guardian, curator, conservator, or other person legally vested with the care of the claimant or his estate or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such estates by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Administrator.

SECTION 788, TITLE 20, PURDON'S PENNSYLVANIA STATUTES (PENNSYLVANIA LAWS 647, SECTION 1, APRIL 24, 1929)

In any action brought under any law of this Commonwealth for the appointment of a committee or guardian for a veteran of any war, or a minor child, or incompetent dependent of a veteran of any war, on whose account benefits of compensation or insurance or other gratuity is payable by the United States Veterans' Bureau, or its successor, or upon the filing of any petition or account

by any such committee or guardian of any such person, notice of such action, or of the filing of such petition or account, and of the hearing thereon, shall be mailed the attorney of the United States Veterans' Bureau office having jurisdiction over such person. In all such cases, the United States Veterans' Bureau, or its successor, shall be a party in interest, and a certified copy of each account filed in the court shall be supplied the said bureau by the committee or guardian.

SECTION 4, PUBLIC NO. 2, 73D CONGRESS, 48 STAT. 9, 38 U. S. C. 704

The President shall prescribe by regulation (subject to the provisions of section 1 (e) of this title) the date of the beginning and of the termination of the period in each war subsequent to the Civil War, including the Boxer Rebellion and the Philippine Insurrection, service within which shall for the purposes of this Act be deemed war-time service. The President shall further prescribe by regulation the required number of days of war or peace-time service for each class of veterans, the time limit on filing of claims for each class of veterans and their dependents, the nature and extent of proofs and presumptions for such different classes, and any other requirements as to entitlement as he shall deem equitable and just. The President in establishing conditions precedent may prescribe different requirements or conditions for the veterans of different wars and their dependents

and may further subdivide the classes of persons as outlined in section 1 of this title and apply different requirements or conditions to such subdivisions.

SECTION 7, PUBLIC NO. 2, 73D CONGRESS, 48 STAT. 9, 38 U. S. C. 707

The Administrator of Veterans' Affairs subject to the general direction of the President and in accordance with regulations to be issued by the President shall administer, execute, and enforce the provisions of this title and for such purpose shall have the same authority and powers as are provided in sections 425, 430, 431, 432, 438, 434, 440, 442, 443, 444, 447, 450, 451, 453, 455, 457, 458, 459, 459a, 459c, 459d, 459e, 459f, title 38, U. S. C., and such other sections of title 38, U. S. C., as relate to the administration of the laws granting pensions.

SECTION 111, TITLE 38, U. S. CODE

Compensation of agent or attorney. No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding $25; nor shall such agent, attorney, or other person demand or receive such compensation, in whole or in part, until such pension shall be allowed. In all claims allowed since June 20, 1878, where it shall appear to the satisfaction

of the Commissioner of Pensions that the fee of $10, or any part thereof, has not been paid, he shall cause the same to be deducted from the pension, and pay the same to the recognized attorney.

SECTION 114, TITLE 38, U. S. CODE

Same; agreement for fee filed; fee in case of failure to file; form; amount paid deducted from fee. The agent or attorney of record in the prosecution of the case may cause to be filed with the Commissioner of Pensions, articles of agreement, without additional cost to the claimant, setting forth the fee agreed upon by the parties which agreement shall be executed in the presence of and certified by some officer competent to administer oaths. In all cases where application is made for pension, and no agreement is filed with the commissioner as herein provided, the fee shall be $10 and no more. And such articles of agreement as may be filed with the Commissioner of Pensions are not authorized, nor will they be recognized except in claims for original pensions, claims for increase of pension on account of a new disability, in claims for restoration where a pensioner's name has been or may hereafter be dropped from the pension rolls on testimony taken by a special examiner, showing that the disability or cause of death, on account of which the pension was allowed, did not originate in the line of duty, and in cases of dependent relatives whose names have been or may

hereafter be dropped from the rolls on like testimony, upon the ground of nondependence, and in such other cases of difficulty and trouble as the Commissioner of Pensions may see fit to recognize them. No greater fee than $2 shall be demanded, received, or allowed in any claim for pension granted by special act of Congress, nor in any claim for increase of pension on account of the increase of the disability for which the pension had been allowed. No fee shall be demanded, received, or allowed in any claim for arrears of pension or arrears of increase of pension allowed by any act of Congress passed subsequent to the date of the allowance of the original claims in which such arrears of pension, or of increase of pension, may be allowed. The articles of agreement herein provided for shall be in substance as follows, to wit: * * *

And if in the adjudication of any claim for pension in which such articles of agreement have been, or may be, filed, it shall appear that the claimant had, prior to the execution thereof, paid to the attorney any sum for his services in such claim, and the amount so paid is not stipulated therein, then every such claim shall be adjudicated in the same manner as though no articles of agreement had been filed, deducting from the fee of $10 allowed by law such sum as claimant shall show that he has paid to his said attorney. Any agent or attorney

or other person instrumental in prosecuting any claim for pension, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or any agent, attorney, or other person instrumental in prosecuting any claim for increase of pension on account of the increase of disability for which pension was allowed, who shall directly or indirectly contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding $500 or imprisoned, not exceeding two years, or both, in the discretion of the court. (Articles of Agreement omitted.)

SECTION 115, TITLE 38, U. S. CODE

Same; commissioner may reject contract for fees. The commissioner shall have power, subject to review by the Secretary, to reject or refuse to recognize any contract for fees, provided for in section 114 of this title, whenever it shall be made to appear that any undue advantage has been taken of the claimant in respect to such contract.

SECTION 2, PUBLIC 536, 71ST CONGRESS, 46 STAT. 1016, 38 U. S. C. 11-a

There shall be at the head of such Veterans' Administration an administrator to be known as the Administrator of Veterans' Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate. Such administrator shall receive a salary of $12,000 a year, payable monthly. Upon the establishment of such Veterans' Administration all the functions, powers, and duties now conferred by law upon the Commissioner of Pensions, the Board of Managers of the National Home for Disabled Volunteer Soldiers, and the Director of the United States Veterans' Bureau are hereby conferred upon and vested in the Administrator of Veterans' Affairs. Such administrator, under the direction of the President, shall have the control, direction, and management of the various agencies and activities enumerated in and referred to in section 1 of this Act, and shall be charged with all the administrative duties relating to the National Home for Disabled Volunteer Soldiers and the Bureau of Pensions now imposed by law upon the Secretary of War and the Secretary of the Interior, respectively. All final decisions or orders of any division, bureau, or board in the Veterans' Administration shall be subject to review, on appeal, by such administrator.

PARAGRAPH XVI, VETERANS' REGULATION NO. 10

The Administrator of Veterans' Affairs is hereby authorized to recognize representatives of the

American Red Cross, the American Legion, the Disabled American Veterans, the Grand Army of the Republic, the United Spanish War Veterans, Veterans of Foreign Wars, and such other organizations as he shall approve, in the presentation of claims. However, no such representative shall be recognized until a certificate has been filed in the Veterans' Administration, under such rules as the Administrator of Veterans' Affairs may prescribe, certifying that no fee or compensation of whatsoever nature shall be charged veterans or the dependents of veterans for service rendered. The rules prescribed by the Administrator of Veterans' Affairs shall contain a provision requiring in each claim the filing of a power of attorney in such manner and form as the Administrator of Veterans' Affairs may prescribe.

PARAGRAPH XVII, VETERANS' REGULATION NO. 10

The Administrator of Veterans' Affairs is hereby authorized, under such rules as he may prescribe, to recognize agents, attorneys, or other persons in the presentation of claims. The rules prescribed by the Administrator of Veterans' Affairs may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in

the presentation of their claims and the Administrator of Veterans' Affairs may, after notice and opportunity for a hearing, suspend or exclude from further practice before the Veterans' Administration any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner, deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter or by advertisement. The Administrator of Veterans' Affairs is further authorized to determine and pay fees in pension claims to such persons, agents and attorneys, and to prescribe rules governing entitlement to and the amount and mode of payment of such fees in accordance with sections 111, 114 and 115, title 38, U. S. C.

PARAGRAPH 12, SECTION C, VETERANS' REGULATION NO. 10, INSTRUCTION NO. 3–A

When an agent, attorney or other person incurs any expense in the prosecution of a claim for pension, he must file a sworn itemized account of such expense with the Veterans' Administration and secure the approval thereof by the Chief Attorney if the claim is adjudicated in the field or the Solicitor if in Central Office before demanding or receiving reimbursement from the claimant or pensioner.

SECTION D, FEES, VETERANS' REGULATION NO. 10, INSTRUCTION NO. 3–A

1. A fee not to exceed $10.00 in any original claim or $2.00 in any claim for increase may be allowed

for the successful prosecution of such claim before the Veterans' Administration except where otherwise prohibited by law.

2. Any person who may collect or attempt to collect, either directly or indirectly, a fee contrary to the provisions of these instructions, shall be subject to the applicable penal provisions of the pension laws.

3. The presentation of a claim before a Special Review Board established under section 20, Public Act No. 78, 73d Congress, or to the Board of Veterans' Appeals seeking to maintain a claim which had been allowed under previously existing laws and which had been denied under Public Act No. 2, 73d Congress, will, for purposes of fee, be considered as an original claim.

4. When a claim has been established under Public Act No. 2 or any prior or subsequent legislation and then for any reason rights thereunder are held terminated or claimant has been cited to show cause why they should not be terminated, claim for maintenance of such original claim will, for purposes of fee, be considered as an original claim.

5. A fee not to exceed $10.00 may be allowed for the successful prosecution of an application for excess pension or apportionment and a similar fee may be allowed for the successful defense of an application for apportionment. No fee will be allowed under this provision unless material assistance has been rendered.

SECTION 500, WORLD WAR VETERANS' ACT, 1924, 43 STAT. 628, 38 U. S. C. 551

That payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau shall not exceed $10 in any one case.

Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than $500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment: *Provided,* That the provisions of this section shall not apply to professional services required in the prosecution of any action in any court of law.

SECTION 493, TITLE 5, U. S. CODE

Agents or attorneys representing claimants before department. The Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed

of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice before his department any such person, agent or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner, deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement.

INSTRUCTION NO. 3–A * * * SECTION "C", RULES OF PRACTICE * * * PARAGRAPH 13, 14, AND 15 * * *

13. Attorneys or agents shall not contract for, demand or receive, directly or indirectly, any compensation whatsoever for advice or consultation concerning the pension laws except such compensation as is herein provided, whether a claim has been or is thereafter filed, or no claim is filed, for the person in whose behalf such advice or consultation is had. Any agent or attorney who shall so do shall be regarded as incompetent to prosecute claims before the Veterans' Administration and shall thereby subject himself to suspension or disbarment to practice before the Veterans' Administration.

14. The fee provided in these instructions shall be due and payable only upon the approval of the

claim by the Veterans' Administration and then only in the event the attorney or agent has rendered material service in the prosecution of the claim. The mere filing of an application for benefits shall not be deemed to be the rendering of material service in the prosecution of a claim.

15. At the time of allowance of the claim an award of the attorney's fee, if same is found due, will be made and paid by deduction from the pension allowed, but only to the attorney or agent of record at the time of allowance. The attorney to be entitled must have been admitted to practice before the Veterans' Administration and in good standing at the time of such payment.

ACT OF JUNE 20, 1878, CHAPTER 367, 20 STAT. 243, 43 U. S. CODE 842

It shall be unlawful for any attorney, agent or other person to demand or receive for his services in a pension case a greater sum than ten dollars. No fee contract shall hereafter be filed with the Commissioner of Pensions in any case. In pending cases in which a fee contract has heretofore been filed, if the pension shall be allowed, the Commissioner of Pensions shall approve the same as to the amount of the fee to be paid at the amount specified in the contract. Sections forty-seven hundred and sixty-eight, forty-seven hundred and sixty-nine, and forty-seven hundred and eighty-six of the Revised Statutes shall not apply to any case or claim hereafter filed, nor to any pending claim

in which the claimant has not been represented by an agent or attorney prior to the passage of this act.

Sec. 2. Section forty-seven hundred and eighty-five of the Revised Statutes is hereby repealed.

ACT OF FEBRUARY 27, 1877, CHAPTER 69, VOLUME 19, PAGE 252, SECTION 4768, REVISED STATUTES

The Commissioner of Pensions shall forward the certificate of (*pensions*) (pension), granted in any case, to the agent for paying pensions where such certificate is made payable, and at the same time forward therewith one of the articles of agreement filed in the case and approved by the Commissioner, setting forth the fee agreed upon between the claimant and the attorney or agent, and where no agreement is on file, as hereinbefore provided, he shall direct that a fee of ten dollars only be paid the agent or attorney.

ACT OF JULY 8, 1870, CHAPTER 225, SECTION 10, VOLUME 16, PAGE 193, SECTION 4769, REVISED STATUTES

It shall be the duty of the agent paying such pension to deduct from the amount due the pensioner the amount of fee so agreed upon or directed by the Commissioner to be paid where no agreement is filed and approved, and to forward or cause to be forwarded to the agent or attorney of record named in such agreement, or, in case there is no agreement, to the agent prosecuting the case, the amount of the proper fee, deducting therefrom the

sum of thirty cents in payment of his services in forwarding the same.

ACT OF MARCH 3, 1873, CHAPTER 234, SECTION 31, VOLUME 17, PAGE 575, SECTION 4785, REVISED STATUTES

No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding twenty-five dollars.

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. —

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS (United States Veterans' Administration), petitioner

IN THE MATTER OF EDMUND J. STEIN, A WEAK-MINDED PERSON

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF THE COURT BELOW

The opinion of the Superior Court of Pennsylvania filed July 18, 1935, appears at page 11 of the record and is reported in Volume 180, Atlantic Reporter, page 577. That court affirmed the order of the Common Pleas Court of Allegheny County dated June 27, 1934, appearing at page 8 of the record and which authorized the guardian of Edmund J. Stein, "a weak-minded person" to pay Hallock C. Sherrard, Esq., from the estate of said Edmund J. Stein the sum of $100.00 "for legal

services and traveling expenses in appearing before the Board of Veterans' Appeals at Washington, D. C., on March 28, 1934."

Petition for leave to appeal was filed in The Supreme Court of Pennsylvania July 27, 1935 (R. 15). Rule was granted on plaintiff to show cause why appeal should not be allowed (R. 20) and on October 1, 1935, the appeal was "refused" (R. 20). Thereupon, the judgment of the Superior Court of Pennsylvania became final on October 1, 1935.

THIS COURT HAS JURISDICTION

FIRST.

The rights and duties of petitioner arise from and are imposed by the Statutes of the United States, and his authority to exercise supervision in this and other similar cases is derived from the Statutes of the United States. Title 38, U. S. Code, Section 450.

Cramer v. *United States,* 261 U. S. 219.

There it was held by this Court that the United States on behalf of three Indians could maintain a suit to cancel a land patent.

In Re Eugene Debs et al., 158 U. S. 564.

In that case this Court held that the United States could properly maintain a bill to enjoin certain persons from interfering with interstate commerce, although the Government had no pecuniary interest involved.

Besides the right recognized in the cases cited, there is express authority conferred upon petitioner by the Acts of Congress heretofore cited in the Petition, excerpts from which are printed on page 23. (The exercise of this authority has been recognized by the State of Pennsylvania as the basis for a Statute making the Administration an interested party. Act April 24, 1929, Pennsylvania Laws 647. See *In Re Siglin,* 161 Atl. 530, 307 (Pa.) 540.)

SECOND.

The subject matter is such that this Court may and should consider and determine this case on the merits involving as it does the proper construction of the Federal Statutes hereinbefore indicated and the Executive Orders and Regulations issued pursuant to Public Law No. 2, 73d Congress.

> *Chicago, Burlington & Quincy Railroad Company* v. *Wells-Dickey Trust Company,* 275 U. S. 161.

In that case this Court granted certiorari to the Supreme Court of Minnesota to review a judgment in a suit brought to recover damages under the provisions of the Federal Employers' Liability Act.

> *American Railway Express Company* v. *Levee,* 263 U. S. 19.

In that case this Court granted a writ of certiorari to the Court of Appeal, First Circuit, of the State of Louisiana to review a judgment which the plaintiff recovered against the petitioner, Ex-

press Company, for damages on account of the loss of a trunk shipped in interstate commerce, the question involved being the applicability of the provisions in the Express Receipt and the tariffs limiting the Express Company's liability in case of loss. This Court held that the limitation of liability was applicable to the interstate shipment involved, notwithstanding a Statute of Louisiana which had the effect of rendering such limitation nugatory by requiring the carrier to prove that the damage was occasioned by accidental and uncontrollable events.

THIRD.

The Writ of Certiorari should be directed to the Superior Court of Pennsylvania, that being the highest Court of the State having jurisdiction of this cause.

Gregory v. *McVeigh,* 90 U. S. (23 Wall.) 294.

In that case this Court held that the Writ properly ran to the Corporation Court of the City of Alexandria, Virginia, where the case was in that class which the parties did not have a right to take to the Court of Appeals in Virginia for review.

Andrews v. *Virginian Railway Company,* 248 U. S. 272.

This Court held that the judgment of the Circuit Court in Virginia was not final in the sense that it was subject to review by this Court until the Court of Appeals of Virginia acted on the application for review thereof, notwithstanding that said

application could be granted or refused in the discretion of the Court of Appeals.

To the same effect is the case of *American Railway Express Company* v. *Levee,* 263 U. S. 19, and *Pennsylvania Railroad Company* v. *Public Service Commission of Pennsylvania,* 250 U. S. 566. The last case involved review of a judgment of the Superior Court of Pennsylvania (as in the present case) wherein the Supreme Court of Pennsylvania "merely denied an appeal upon a point that probably was thought to have been decided already by the court."

FOURTH.

The United States has the power to limit fees payable to attorneys for legal services rendered in behalf of veterans in connection with their claims for pension or other benefits due or alleged to be due from the United States.

Frisbie v. *United States,* 157 U. S. 160.

In that case it was held that the Congress had authority to grant or to withhold pensions, to determine and fix conditions under which applications therefor shall be prosecuted and to prescribe the conditions under which others may assist in procuring pensions. Conviction for violating such restrictive provisions was affirmed.

Margolin v. *United States,* 269 U. S. 93.

The court in this case held that the Act approved May 20, 1918, 40 Stat. 555, limiting the fees of attorneys or agents in prosecuting claims for benefits

before the Bureau of War Risk Insurance was constitutional and that the only compensation permitted agents or attorneys for services of this character was such as provided therein, and none other. Conviction in this case was also affirmed.

Since the decisions of this Court in the cases above cited the power of the United States to limit fees payable to agents or attorneys for services rendered claimants in prosecuting claims for pension or compensation has not been seriously questioned, and the decision of the Superior Court in the instant case is in direct conflict with the decisions, supra, of this Court.

FIFTH.

The United States Statutes and Regulations are applicable to this case, and the contrary decision of the Superior Court of Pennsylvania denied a right, privilege, or immunity granted the veteran by said Statutes and Regulations.

By virtue of the provisions of Public Law No. 2, 73d Congress, 38 Stat. 8, Title 38 U. S. Code 701, the Executive Regulations pursuant thereto and Sections 111, 114 and 115 of Title 38, U. S. Code (see pages 27 to 30 hereof), the United States has limited the fees payable to attorneys for services in connection with claims for pension and other similar benefits. Such limitation applies with respect to incompetent as well as competent claimants and the effect of such limitation may not be avoided by a State Court. The laws of the United

States made pursuant to the Constitution thereof are the supreme law of the land and are binding upon the State Courts notwithstanding any provisions of State Statutes contrary thereto. Article VI Constitution. Hence, the order entered by the Court of Common Pleas and affirmed by the Superior Court of Pennsylvania undertaking to authorize the guardian of an incompetent veteran to pay an attorney's fee in excess of the amount limited by the United States was erroneous, and the judgment should be reversed.

STATEMENT

It is believed a sufficiently full statement of the essential facts has been made in the Petition (pages 1 to 21 hereof) and hence in the interest of brevity they will not be repeated here.

ASSIGNMENTS OF ERROR

The Superior Court of Pennsylvania erred in holding that:

1. The United States had no "jurisdiction or control" of pension money paid to a guardian of an incompetent veteran in respect to disbursements sought to be made by such guardian for attorneys' fees exceeding in amount fees permitted under the applicable Federal Statutes and Executive Regulations pursuant thereto.

2. The court in which the guardianship proceedings were pending had "ultimate and exclusive power" over the fixing and allowing of such fees

from pension funds in the hands of the guardian of an incompetent veteran, contrary to the provisions of the Federal Statutes and Executive Regulations issued pursuant thereto.

3. The question here presented is determinable by inquiry as to the passing of title to the funds and a determination that title thereto had passed from the United States to the guardian or the ward.

4. There is no Federal law or Regulation applicable to this case.

Argument will not be submitted in support of the first, second and third points hereinabove indicated in the summary on pages 42 to 45 hereof, with respect to this Court's jurisdiction because those points are well settled and it is understood there is no dispute with respect thereto.

The fourth and fifth points in the summary may conveniently be presented and discussed together, i. e., that the United States has the power to limit attorneys' fees in connection with pension claims, that it has done so, and that such law and regulations are applicable—and determinative—in this case.

It is believed there is no serious doubt that such power exists. It has been exercised for many years without any distinction being drawn as between competent and incompetent claimants for pension benefits. It would seem no sound basis exists for any distinction between competent and in-

competent claimants in this respect. If the United States can protect pension funds until they reach the beneficiary even to the extent of limiting attorney fees which may be contracted for or paid in the cases of *competent* veterans as it undoubtedly can under the principles announced by this Court in the cases of *Frisbie* v. *United States,* 157 U. S. 160; and *Margolin* v. *United States,* 269 U. S. 93, it seems necessarily to follow that it could do so in the cases of *incompetents* who are unable to protect themselves. This seems clear from the decisions of this Court in the cases of *United States* v. *Hall,* 98 U. S. 343; and *Spicer* v. *Smith,* 288 U. S. 430.

In the *Hall case* the guardian was indicted and convicted of embezzling pension money paid to him for the benefit of his ward. For the defendant it was insisted that when payment of pension money was made to the guardian, the fund ceased to be within the constitutional control of the United States and that the Federal Statute penalizing a guardian embezzling such fund was unconstitutional and void. After stating this argument the opinion proceeds:

> * * * But the court is unhesitatingly of a different opinion, for several reasons: 1. Because the United States, as the donors of the pensions, may through the Legislative Department of the Government, annex such conditions to the donation as they see fit, to

insure its transmission unimpaired to the beneficiary. 2. Because the guardian no more than the agent or attorney of the pensioner is obliged by the laws of Congress to receive the fund; but if he does, he must accept it subject to the annexed conditions. 3. Because the word "guardian", as used in the Acts of Congress, is merely the designation of the person to whom the money granted may be paid for the use and benefit of the pensioners. 4. Because the fund proceeds from the United States, and inasmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it passes into the hands of the beneficiary, which is all that is necessary to decide in this case. 5. Because the elements of the offense defined by the Act of Congress in question consist of the wrongful acts of the individual named in the indictment, wholly irrespective of the duties devolved upon him by the state law. 6. Because the theory of the defendant that the Act of Congress augments, lessens or makes any change in respect to the duties of a guardian under the state law is entirely erroneous, as the Act of Congress merely provides that the pension may be paid to the person designated as guardian, for the use and benefit of the pensioner, and that the person who receives the pension, if he embezzles it or fraudulently converts it to his own use, shall be guilty of a misdemeanor, and be punished as therein provided.

In its opinion in the case of *Spicer* v. *Smith,* 288 U. S. 430, this Court, while holding that the United States has no proprietary interest in pension (compensation) after payment to a guardian of an incompetent veteran of the World War, used the following significant language:

> The provisions for exemption, nonassignability and suspension of payments plainly imply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose to safeguard to beneficiaries the appropriations and payments made for their benefit (*United States* v. *Hall,* 98 U. S. 343, 353. *Westfall* v. *United States,* 274 U. S. 256) and evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to protect themselves. * * *
>
> Petitioner cites *United States* v. *Hall, supra.* The question there was whether Congress has power to prescribe punishment for the embezzlement by guardians of pension money paid them in behalf of their wards. The indictment showed that the money alleged to have been embezzled was the property of the accused guardian's ward. The court held that to insure transmission unimpaired to the beneficiary the United States might annex such conditions to the donation as it deemed appropriate

> and that the guardian was bound to accept the payment subject to the terms of the grant and that Congress had power to protect its gift until it passed into the hands of the beneficiary. * * *

It has been determined by this Court in the *Frisbie* and the *Margolin cases* heretofore cited that the United States has the power and authority to limit fees which beneficiaries may pay to their attorneys, and which attorneys or agents may demand, charge, or collect, and to provide punishment for the violation of such restrictive statutes. It has also been determined that the United States may constitutionally protect the fund in question at least until it reaches the hand of the beneficiary, by prescribing penalties for embezzlement and misappropriation of such funds by a guardian. *U. S.* v. *Hall*, 98 U. S. 343. It seems clear that such protection must exist as to that class of claimants who need it more than any others, to wit, incompetent and minor claimants. There does not appear to be any sound reason why the power of the United States to place a limitation or prohibition upon a fee to be charged in pension cases should be held to apply only to competent persons. If there be any reason for a distinction, the converse would seem more logical. In fact the reasons in support of the existence and exercise of the power apply with equal force to competent and incompetent claimants.

On this point the language used by the Court in the case *In Re Shinberg,* 263 N. Y. S. 354, is persuasive. In this case the attorney, upon the solicitation of the committee of the insane veteran, filed a suit in the Federal District Court on a contract of War Risk Insurance, which suit was for lack of jurisdiction dismissed. Thereupon, the claim was allowed and paid and the attorney, joined by the committee, petitioned the Supreme Court, New York County, for a fee amounting to 10% of the insurance so paid; which application was allowed over the objection of the Administrator of Veterans' Affairs. The objection, as in the instant case, was on the ground that the fee was illegal because contrary to Federal Statute. The Court, Appellate Division, in reversing the judgment, said:

> * * * the necessity for such a statute (referring to Section 500, World War Veterans' Act) must be apparent, especially in view of the great need of protection for people who really are wards of the court and who in the absence of such statutory provisions would, in many cases, be preyed upon by the unscrupulous. Because it safeguards and protects the unfortunates who are wholly dependent upon the Government for support, this statute should be rigidly enforced.

Such is the effect of the statutes and regulations, and of the decisions of this Court, already referred

to. A careful search has failed to disclose any reported decision to the contrary, by either a Federal or a State Court, excepting only the decision in the instant case. To obtain a review and correction of that decision is the purpose of the present Petition to this Court.

To present this case properly it is believed that a short review of the history of pension legislation and the control of fees to be charged by pension agents or attorneys is desirable. From the date of its organization the United States Government under its authority to raise armies and wage war has cared for those who made up its armed forces in time of war, and their dependents. It developed a complete and comprehensive system of gratuities called pensions for that purpose. It provided for the protection of pension funds until they reached the pensioners. It prohibited the assignment of pensions, of levy on such funds by creditors, exempted them under certain conditions from taxation, provided penalties for embezzlement of such funds by guardians, and limited fees which agents or attorneys might lawfully charge for prosecuting claims for pensions. The constitutional authority of the United States so to do has been sustained in each instance.

In connection with the pension system it was provided by the Act of July 4, 1884, 23 Stat. 101, Section 493, Title 5, U. S. C., that the Secretary of the Interior might provide rules and regulations

governing agents or attorneys prosecuting claims before that Department. This Act also prohibited an agent or attorney from demanding or receiving any fee other than that the Commissioner of Pensions should direct to be paid to him out of the pension allowed, if any, and not exceeding $25.00, 23 Stat. 99; Section 111, Title 38, U. S. C., provided certain fees to be allowed by the Commissioner of Pensions (23 Stat. 99; Section 114, Title 38, U. S. C.), and provided further that:

> * * * Any agent or attorney or other person instrumental in prosecuting any claim for pension, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension than is herein provided, or *for the payment thereof at any other time or in any other manner than is herein provided* * * * shall be deemed guilty of a misdemeanor. (Italics supplied.) (Sec. 112, Title 38, 23 Stat. 98.)

The sections of law referred to will be found printed in full on pages 27, 28, 29, and 30 hereof.

In 1917, during the World War, Congress provided for a new system of gratuities and insurance for the members of the armed forces of the United States and their dependents. The gratuities were designated as compensation. (Act of October 6, 1917, 40 Stat. 398, Section 13, War Risk Insurance Act, and the Act of June 7, 1924, 43 Stat. 628, Sec-

tion 500 World War Veterans' Act). Under this system fees which agents or attorneys might contract for, demand or receive for prosecuting any claims for benefits under the said acts either before the establishment of the Government charged with the duty of administering said law or where the Government consented to be sued in connection with such claim, were limited. These limitations were sustained by this Court in the case of *Margolin* v. *United States,* 269 U. S. 93.

The *Margolin* case was not greatly unlike the instant case. There the attorney was retained to secure insurance. He went from New York City to Washington, D. C., prepared certain papers and made certain presentations to the Bureau. Insurance having been paid, he demanded a fee of $2,000.00 and received one of $1,500.00. He claimed that the act limiting the fee applied only to the preparation of papers, and not to the other work he did. This Court held against such contention, that the language was plain, and that the validity of the act is not open to serious doubt.

By an Executive Order, the President of the United States, made pursuant to the Act of July 3, 1930 (46 Stat. 1016; Section 11, Title 38 U. S. C.), the Bureau of Pensions and the United States Veterans' Bureau were consolidated into a new agency of the Government known as the Veterans' Administration, the head of which was designated the Administrator of Veterans' Affairs (Section 2, Act

of July 3, 1930; 46 Stat. 1016; Section 11a, Title 38 U. S. C.), who was and is charged with all the duties relating to the Bureau of Pensions formerly imposed on the Secretary of the Interior and the Commissioner of Pensions. Such Administrator also is vested with the powers, and exercises the functions, of the former Director of the Veterans' Bureau.

These two systems of gratuities or pensions continued until enactment of the Act of March 20, 1933 (Public No. 2, 73d Congress, 48 Stat. 8; Sections 701 to 721, Title 38 U. S. C.). By that Act all public laws granting compensation, pension, disability allowance, and other benefits were repealed (with certain exceptions not here material). A new system was initiated in which all gratuities were designated as pensions. The administrative functioning of the Veterans' Administration continued substantially as before.

Section 493, Title 5 U. S. C., 23 Stat. 101, and Sections 111, 114, and 115, Title 38 U. S. C., 23 Stat. 99 and 101, were not a part of any law "granting pension" and hence were not repealed. On the contrary they were specifically continued in effect by Section 7 of Title I of the Act of March 20, 1933 (48 Stat. 9; Section 707, Title 38 U. S. C.), which provided that the Administrator of Veterans' Affairs should have the authority and power granted by certain enumerated sections, and "such other sections of Title 38 U. S. C., as relate to the administration of laws granting pensions."

The constitutionality of the statute, 23 Stat. 98, 99 and 101, referred to in the preceding paragraph, was upheld by the Court of Appeals of the District of Columbia in *Phillips* v. *Ballinger* (37 App. D. C. 46), the Court saying:

> The right to appear before the Interior Department is not an inherent right, but a privilege granted by law and subject to such limitations and conditions as are necessary for the protection both of the Department and the public * * *.

(The case involved the question whether the provisions of the Statute concerning disbarment violated the "due process clause." *Held,* it does not.)

This language is of the utmost significance, for if in this case the claim was for compensation which had been disallowed under the recent Acts of Congress, as seems to be the basis for the Superior Court's finding, then the attorney not only had no inherent right to render the services (i. e., appear before, and be recognized by, the Veterans' Administration) but was precluded therefrom by Section 500, World War Veterans' Act, supra, and from charging the fee, as held by the Court of Appeals for the District of Columbia in *Conlon* v. *Hines et al.,* 77 Fed. (2d) 397. In other words, the right the attorney had to render the services was derived from the Statutes and Regulations which prescribed the fee itself.

As has already been seen, the authority of the United States to enact legislation of the character

involved in this case has been sustained by this Court in the cases of *Frisbie* v. *United States,* 157 U. S. 160; and *Margolin* v. *United States,* 269 U. S. 93. The Superior Court of Pennsylvania in the instant case held that neither the United States nor the administrative agency, the Veterans' Administration, had any "jurisdiction or control" of funds after payment to a guardian and that to permit the Veterans' Administration to "determine" what portion of an incompetent's estate should be paid for services of counsel in protecting his rights would be to "impeach the sovereignty of the State of Pennsylvania" by invading the jurisdiction of its courts and, further, that while recognizing that a fund received by the guardian in the nature of a gratuity to his ward from the United States is subject to certain restrictions imposed by the Government, yet such restrictions should be strictly construed. The Superior Court's conclusion is exactly contrary to the conclusion reached by the Appellate Division, Supreme Court (First Department) of New York (*In Re Shinberg,* 263 N. Y. S. 354, *supra*), and by other courts in the cases cited in the opinion in the Shinberg case. In support of its conclusion the Superior Court of Pennsylvania mentioned, and apparently laid great stress upon, the case of *Spicer* v. *Smith,* 288 U. S. 430. In that case this Court held that the funds paid to a guardian and by him deposited in a bank which became insolvent were *not "funds of the United States"* but that title had passed and vested in the ward.

It seems to be the view of the Superior Court that Congress can make pension money inaccessible for the payment of attorney fees until it passes into the hands of the pensioner but that such laws do not apply after it reaches the beneficiary, or his guardian; i. e., that the Government's authority ceased after the title to the money passed from the United States.

The limitations were imposed by Congress. That such legislation is within its power, this Court has determined in the cases already cited. Attention is also invited to the case of *Calhoun* v. *Massie,* 253 U. S. 170, wherein it was held that Congress had the authority to control the conditions under which claims against the Government might be prosecuted and to protect claimants from improvident bargains and the Treasury against the possibility of frauds or impositions. In that case the contract was made before passage of the act limiting the fee. It was nevertheless held that the Act does not contravene the United States Constitution (Fifth Amendment). The plaintiff had contracted with defendant for a fee of 50% of claim. Congress in authorizing payment of the claim limited the fee to 20%. The Court said:

> For nearly three-quarters of a century Congress has undertaken to control in some measure the conditions under which claims against the government may be prosecuted. Its purpose has been in part to protect just claimants from extortion or improvident

> bargains, and in part to protect the Treasury from frauds and imposition. See *United States* v. *Van Leuven,* 62 Fed. 52, 56. * * * Congress has manifested its belief that the causes which gave rise to laws against champerty and maintenance are persistent. By the enactment, from time to time, of laws prohibiting the assignment of claims, and placing limitations upon the fees properly chargeable for services, Congress has sought both to prevent the stirring up of unjust claims against the government and to reduce the temptation to adopt improper methods of prosecution which contracts for large fees, contingent upon success, have sometimes been supposed to encourage. The constitutionality of such legislation, although resembling in its nature the exercise of the police power, has long been settled (*Marshall* v. *Baltimore & O. R. Co.,* 16 How. 314, 336, 14 L. ed. 953, 962; *United States* v. *Hall,* 98 U. S. 343, 354, 355, 25 L. ed. 180, 183, 184; *Ball* v. *Halsell,* 161 U. S. 72, 82, 84, 40 L. ed. 622, 625, 626, 16 Sup. Ct. Rep. 554.

The contention was urged, as in the instant case, that the prohibition did not extend to payment out of funds other than those derived from the claim. On this point the Court said:

> * * * It is urged that the act here in question should be construed as limiting only the proportion of the specific funds received from the government which may be

> applied to payment of attorneys' fees; but the second paragraph of the law leaves no room for construction. It provides that "it shall be unlawful for any attorney * * * to receive any sum which in the *aggregate* exceeds twenty per centum" of the claim. * * *

So far as the Superior Court's opinion is based upon the view that the Government's power, or, the operation of the Federal Statute, ceased when the pensioner or his guardian received the money, a complete answer to that position will be found in the opinion of this Court in the case of *United States* v. *Hall, supra,* wherein this Court held that Congress had the power to protect the fund in question against unauthorized conversion to the use of another "and to secure its safe and unimpaired transmission to the beneficiary", and had exercised such power. This was not modified, but was confirmed by the recent decision of *Spicer* v. *Smith, supra.* In principle, those decisions control the present case.

The Circuit Court of Appeals for the Sixth Circuit in the case of *Welty* v. *United States,* 2 Fed. (2d) 562—(which was a criminal prosecution for the charging of a fee in excess of that allowed by law (Section 13, War Risk Insurance Act, Section 500, World War Veterans' Act), and in which the defense was that the fee was paid by one who was the guardian of the veteran from his own (the guardian's funds)—observed that "if, as the

Government contends, * * * these proceedings were more or less of a subterfuge intended to hide the actual transaction, and if the actual agreement, though made with the father, was made by him on behalf of his son, and was that the defendant should receive one-third of the amount allowed by the Government to the son—then the verdict would be just." In other words the prohibition or limitation is on the charging of a fee, not on the funds out of which it may be paid.

In the case of *United States* v. *Moyers,* 15 Fed. 411, the court instructed the jury:

> After the pensioner receives his money it is his own, and *he may do with it what he pleases, except to pay his agent or attorney any greater sum than ten dollars* ($10) directly or indirectly.

Not only have the courts of the United States spoken with regard to the question here presented, but the courts of the several states have uniformly sustained this legislation. In the case of *Hall* v. *Kimmer,* 61 Mich. 269, it was held that the veteran might recover from his attorney $150 already paid for services in prosecuting a claim because the transaction was "absolutely forbidden by statute" and "illegal." The court in *Smart* v. *White,* 37 Me. 333, in discussing a contract for fees in a case of this character, held that if there was such a contract it was "illegal and void." The Court of Appeals of Kentucky in *Christie* v. *Steger's Admr.,*

21 Ky. L. Rep. 1799, in declining to enforce a contract for fees in prosecuting a claim for pension, held that it "was in violation of Federal Statute" which was intended not only to protect the pensioner but the Government as well, and that a "palpable violation of said statute should not be treated with indifference, nor a violation thereof encouraged or upheld by the courts."

The courts of the various states have uniformly applied the provisions of the Federal Statutes and Regulations limiting fees to cases in which the beneficiaries are not sui juris and are under guardianship and in which their estates are, of course, being administered by the State Courts. In addition to the *Shinberg case, supra,* attention is invited to the following cases:

In the case of *In Re Roy C. Minor,* 145 So. 507, wherein objections were filed by the Administrator of Veterans' Affairs—as in the instant case—the Supreme Court of Mississippi sustained the Chancery Court in denying the guardian's petition for authority to pay his attorney a fee greater than that allowed by law (Section 500, World War Veterans' Act, supra) for presenting a claim for war risk term insurance, and held that the estate of the ward could not lawfully be charged any greater fee than authorized by the United States Statute. In the case of *Hines* v. *McCoy,* 157 So. 306, likewise a case wherein objections were filed by the Administrator, the same court said:

> The main argument in justification of the allowance of the $1,300.00 fee, and the Chancellor's act in sustaining the demurrer to the petition of Hines, the Administrator of Veterans' Affairs, is that the chancery court is not controlled by the Federal authorities in the administration of estates, after the money has passed into the hands of the guardian, and that the Federal Administrator has no standing to intervene and question any act done in the administration, because he has no such interest as would warrant his intervening, and that it would be a meddling by Bureaus of the Federal Government to allow a Federal Administrator to control the State Courts.
>
> We do not think this contention can be maintained. There is no effort, as we understand the proceeding here, for the Federal Government to undertake to control the state court, but the Government seeks to see that the money allowed to War Veterans through insurance is properly and economically administered. The Federal Government has the right to provide, as a condition of the policies and the allowances, as it has provided, that not more than a given amount, ($10.00) shall be allowed for procuring the money from the Government for war veterans. * * *

On the specific point that the Federal Statute applies only to the original claim and not to action after the claim is established, which seems to be the view of the Superior Court, the case of *United*

States v. *Reynolds,* 48 Fed. 721, is directly in point. In that case the pensioner had been duly admitted to the rolls, but being ignorant and unable to prepare the then necessary voucher, he procured an attorney to fill out the vouchers and forward them to the pension agent. When the check arrived, the attorney retained out of the proceeds thereof a fee of $10.00, for which action he was indicted. The defense, in part, was that defendant was not "a person instrumental in prosecuting a claim for pension." On this point the court said:

> * * * The pensioners deserve and receive at the hands of the government the most careful and tender consideration. Many of them are helpless; often they are ignorant, and exposed to extortion. For this reason congress has enacted laws for protecting them from the rapacity of their agents, not only in the steps necessary for the establishment of their right to be upon the pension rolls, but also in every proceeding which must be taken in order to obtain the installments of their pension. The defendant was instrumental in prosecuting the claim of Danner, within the terms of the section. * * *

Upon a casual reading of the three cases mentioned below, one might believe they hold contrary to the above-stated views, but a close analysis will show they do not. Two are by United States District Courts and one by the Supreme Court of Rhode Island.

In *United States* v. *Nicewonger* (20 Fed. 438) the District Court, Western District of Pennsylvania, held that the Federal Statute did not apply to a claim for reimbursement for expenses of last illness out of accrued pensions.

In *United States* v. *Brown* (40 Fed. 457) the District Court, Eastern District of South Carolina, held that the statute did not apply to voluntary donations by the pensioner, but would apply to any solicitation.

In *Southwick* v. *Evans,* 21 Atl. 104, the Supreme Court of Rhode Island said:

> The court after examining several items of the account continued: Allowing "to E. D. McGuinness, in matters relating to the guardianship, and excluding services in procuring the pension, $50", and adding: "In regard to charges for services performed, and expenses incurred, about the pension, we have allowed the guardian compensation for such work and expenses as the pensioner himself would ordinarily have done and incurred, independent of his attorney, if he had been of capacity, being of the opinion that such allowances are not to be regarded as the services of an attorney, agent, or other person in procuring a pension, within the meaning of the United States pension laws, but rather as preparations for the prosecution of the claim."

It is obvious that the first two are not in point. The third case differentiates between the compensa-

tion and expenses which may be allowed a guardian for work which the veteran himself, if sui juris, would do, and that which might be done by an attorney. This case (if correct) does not sustain the decision of the Superior Court on any point.

The authorities cited and relied on by petitioner, and others omitted in the interest of brevity, clearly demonstrate that the courts below erred in holding that the Federal Statutes and Regulations pursuant thereto do not effectually limit the *amount* of the fee payable.

As indicated in the Petition (page ~~17~~ 14) the decisions of the courts below were erroneous for still another reason, viz, the same Federal Statutes and Regulations limiting the *amount,* prescribe an exclusive mode or manner of allowance and payment of such fees as may properly be paid.

The statutory history stated on pages 14 to 16 need not be repeated here. No judicial decision directly in point on this second contention has been found, except the ruling of the District Court of the United States for the Northern District of Iowa in the case of *U. S.* v. *Van Leuven,* reported in 62 Fed. 52. In overruling defendant's demurrer to an indictment for violating the Act of July 4, 1884, heretofore discussed that Court said:

> In regard to this class of cases it is not necessary to aver or show that the amount received by the defendant is in excess of the amount which might be lawfully demanded or received by the defendant, for the charge

> is not that an unlawful amount was received, but that the amount, whether excessive or not, was received at an unlawful time * * *.

This Court cited the Van Leuven case in its opinion in the case of *Calhoun* v. *Massie,* 253 U. S., at page 173, 64 Law Ed. at page 845. The correctness of petitioner's position here apparently was *assumed* by the Supreme Court of Massachusetts in the case of *Wolcott* v. *Frissell* (1883), 134 Mass. 1, 45 Amer. Rep. 272. The *decision* therein was that the amount was properly limited by the court below to that prescribed by the Federal Statute.

Adverse counsel may possibly cite the opinion of the Massachusetts Court in *Caverly* v. *Robbins,* 149 Mass. 16, 20 N. E. 450, 2 L. R. A. 745, as contrary to the position just indicated in that there was a judgment for $10.25 for the plaintiff in that case who sued a pensioner for $162.00 alleged to be the reasonable value of his professional services in obtaining the pension for defendant. But that case is not in fact contrary to petitioner's position. The defendant did not appeal and there was nothing before the court except the *plaintiff's* exceptions to the judgment, which limited recovery to $10.25. It is also probable that that case was controlled by the Act of June 20, 1878, supra. The earlier case of *Wolcott* v. *Frissell,* supra, was cited in support of the court's conclusion that the *plaintiff's* exceptions to the trial court's judgment should be overruled.

The same observations may be made as to the Michigan case of *Hall* v. *Kimmer* (1886), 61 Mich. 269, 28 N. W. 96, where the review was invoked *by the attorney* only, who complained of an allowance of the limited *amount* prescribed by the Federal Statute. There are other cases, such as *Ladd* v. *Boston,* 64 N. H. 613, which fall in the same category.

However, the construction now asserted by petitioner as proper has the sanction of administrative approval over a long period of years.

In the Decision of the Secretary of the Interior in the case of George D. Hilton; June 17, 1896, in Volume 8, Decisions of the Department of the Interior, at page 183 (discussing the Act of 1884), it is said:

> In this connection I remark that by operation of amended section 4785, Revised Statutes, every payment, in compensation for services in prosecuting a claim for pension or bounty land must find its authority in the direction of the Commissioner of Pensions. Nor is the statute simply directory in its terms, for it expressly prohibits the demand or receipt of any other compensation than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding $25.
>
> This law is, therefore, mandatory in its terms, and its application is expressly made to rest in the discretion of the Commissioner of Pensions. Yet this is not an arbitrary discretion, but a discretion founded in law,

> reason, and justice. The Commissioner has power to allow fees, in suitable cases, not exceeding $25. * * *

and again on page 185 it is said:

> From the very nature of the statute regulating the allowance and payment of fees, it is evident that the attorney has had no legal right to collect directly from the pensioner since the enactment of the law of July 4, 1884, whereby the act of June 20, 1878, was repealed.

The statutory language there considered is in substance the same as is here involved.

Mr. Justice Van Devanter, then Assistant Attorney General, had occasion to consider the same statute in an opinion rendered the Secretary of the Interior in 1899 in the case of Margaret E. Davis (Volume X, page 403, Decisions of the Department of the Interior).

In the course of an opinion concluding that a claim by the wife of a pensioner for "divided pension" under the Act of March 3, 1899, was not a "claim for pension" within the terms of the Act of 1884, he nevertheless recognized the construction now urged by petitioner. After referring to certain statutory provisions, this language occurs in said opinion at page 408:

> When the pension is allowed, the fee for the prosecution of the claim, if conducted by an agent, attorney, or other person employed by the claimant for that purpose, is earned, *but it can be paid only upon the di-*

*rection of the Commissioner of Pensions, and then only out of the pension money. * * **

SUMMARY

It will be seen therefore that—

A. the United States has the power to limit fees which may be charged by attorneys for services in presenting pension claims.

B. the United States has by Statute, and Regulations issued pursuant thereto, limited the fees which may be charged for such service.

C. the limitations apply in this case, and any contract contrary thereto is illegal.

D. the payment of a fee may be made only in the manner or mode prescribed by Regulations, viz: directly to the attorney by the Veterans' Administration upon approval by the latter.

E. the Superior Court in deciding this case to the contrary erred.

F. in so deciding the court deprived the petitioner, and the insane veteran on whose behalf he appeared, of a right, privilege, or immunity granted by Federal law.

CONCLUSION

It is respectfully submitted that this Court has jurisdiction of the subject matter; that the petitioner is entitled to appear and seek a review of the judgment below by this Court, that such judgment is erroneous, and that in view of the importance of the question and its wide application in

many cases, this Court should grant the Writ of Certiorari as prayed for and determine the case on its merits.

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Dated at Washington, D. C., Arlington Building, December 17, 1935.

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No. 659

In the Supreme Court of the United States

OCTOBER TERM, 1935

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS, UNITED STATES VETERANS ADMINISTRATION, PETITIONER

v.

MINNIE STEIN, AS GUARDIAN OF THE ESTATE OF EDMUND J. STEIN, A WEAK-MINDED PERSON

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PITTSBURGH, STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED DECEMBER 27, 1935
CERTIORARI GRANTED FEBRUARY 3, 1936

BRIEF OF PETITIONER

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 659

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS (UNITED STATES VETERANS' ADMINISTRATION), PETITIONER

v.

MINNIE STEIN, AS GUARDIAN OF THE ESTATE OF EDMUND J. STEIN, A WEAK-MINDED PERSON

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PITTSBURGH, STATE OF PENNSYLVANIA

BRIEF OF PETITIONER

JURISDICTION, STATUTES AND REGULATIONS INVOLVED

This Court has jurisdiction under 28 U. S. C., Section 344 (b). Certiorari granted February 3, 1936. The many Statutes and the Regulations involved are listed in the Index and are printed in full, or insofar as pertinent, in the Appendix.

STATEMENT

QUESTIONS PRESENTED

The ultimate questions here involved are—(a) whether a State Court in which the guardianship of

an incompetent veteran is pending may validly direct the payment of a fee for legal services rendered at the request of the guardian in connection with said veteran's pension claim, which fee is in excess of the maximum fee prescribed by the Acts of Congress and Executive Regulations issued pursuant thereto, and (b) whether a fee for such services may be charged or paid in a mode or manner other than as prescribed by Paragraph XVII of Veterans' Regulation No. 10 and Section 114 of Title 38, U. S. Code, viz: directly by the Veterans' Administration to the attorney if and when allowed by the Veterans' Administration.

FACTS THE BASIS OF CONTROVERSY

On June 27, 1934, the guardian filed in the Court of Common Pleas, which had appointed the guardian in 1921 and in which court such proceedings were pending, an application for authority to pay Hallock C. Sherrard, Esq., an attorney at law of Pittsburgh, Pennsylvania, the sum of $100.00 "for his services and expenses and making the trip to Washington, D. C., to represent her in her claim for her said son's estate before said Board of Veterans' Appeals" (R. 2), reciting as a basis for such application that under new legislation of Congress "enacted about a year ago the compensation of $100.00 per month payable on account of the permanent and total disability of said veteran has been cut off. * * * That a hearing on this matter before the Board of Veterans' Appeals at Washington, D. C., has been set for Wednesday, March 28, 1934" (R. 2). Order as

prayed for was entered by said Court of Common Pleas on June 27, 1934 (R. 8), over the objections (R. 3) of petitioner timely filed as required by the law of Pennsylvania. Appeal was duly prosecuted from such order to the Superior Court of Pennsylvania (R. 11).

OPINION OF THE COURT BELOW

The opinion of the Superior Court of Pennsylvania filed July 18, 1935, appears at page 11 of the record and is reported in Volume 180, Atlantic Reporter, page 577. That court affirmed the order of the Common Pleas Court of Allegheny County dated June 27, 1934, appearing at page 8 of the record and which authorized the guardian of Edmund J. Stein, "a weak-minded person" to pay Hallock C. Sherrard, Esq., from the estate of said Edmund J. Stein the sum of $100.00 "for legal services and traveling expenses in appearing before the Board of Veterans' Appeals at Washington, D. C., on March 28, 1934."

Petition for leave to appeal was filed in The Supreme Court of Pennsylvania July 27, 1935 (R. 15). Rule was granted on plaintiff to show cause why appeal should not be allowed (R. 20) and on October 1, 1935, the appeal was "refused" (R. 20). Thereupon, the judgment of the Superior Court of Pennsylvania became final on October 1, 1935.

Certiorari granted February 3, 1936, (R. 22).

ERRORS ASSIGNED

The Superior Court of Pennsylvania erred in holding that:

1. The United States had no "jurisdiction or control" of pension money paid to a guardian of an incompetent veteran in respect to disbursements sought to be made by such guardian for attorneys' fees exceeding in amount fees permitted under the applicable Federal Statutes and Executive Regulations pursuant thereto.

2. The court in which the guardianship proceedings were pending had "ultimate and exclusive power" over the fixing and allowing of such fees from pension funds in the hands of the guardian of an incompetent veteran, contrary to the provisions of the Federal Statutes and Executive Regulations issued pursuant thereto.

3. The question here presented is determinable by inquiry as to the passing of title to the funds and a determination that title thereto had passed from the United States to the guardian or the ward.

4. There is no Federal law or Regulation applicable to this case.

SUMMARY OF ARGUMENT

1. The United States has the power to limit fees payable to attorneys for legal services rendered in behalf of veterans in connection with their claims for pension or other benefits due or alleged to be due from the United States.

2. The United States Statutes and Regulations are applicable to this case, and are binding upon the State Court, Article VI, Constitution.

3. The fee allowed by the Superior Court was illegal for (a) it was contrary to the Statutes as to

amount, and (b) it was contrary to the Statutes and the Regulations (Executive Orders) as to method of allowance and payment.

ARGUMENT

1. The United States has the power to limit fees payable to attorneys for legal services rendered in behalf of veterans in connection with their claims for pension or other benefits due or alleged to be due from the United States.

The record, by implication, shows (R. 1–2) and the courts so assumed (R. 7 and R. 13) that the fee, if allowed, would be paid out of the estate of the veteran comprised solely of payments of compensation and insurance, which payments had been made by the Veterans' Administration. While, as will be pointed out more particularly below, the illegality of the fee is not wholly determinable by the funds from which it is paid, it is believed appropriate at the very outset to examine the soundness of the decision of the Superior Court that the Federal Government could not limit the fees to be paid out of such estate.

To present this case properly it is believed that a short review of the history of pension legislation and the control of fees to be charged by pension agents or attorneys is desirable. From the date of its organization the United States Government under its authority to raise armies and wage war has cared for those who made up its armed forces in time of war and their dependents. It developed a complete

and comprehensive system of gratuities called pensions for that purpose. It provided for the protection of pension funds until they reached the pensioners. It prohibited the assignment of pensions, of levy on such funds by creditors, exempted them under certain conditions from taxation, provided penalties for embezzlement of such funds by guardians, and limited fees which agents or attorneys might lawfully charge for prosecuting claims for pensions. The constitutional authority of the United States so to do has been sustained in each instance.

In connection with the pension system it was provided by the Act of July 4, 1884, 23 Stat. 101, Section 493, Title 5 U. S. C., that the Secretary of the Interior might provide rules and regulations governing agents or attorneys prosecuting claims before that Department. This Act also prohibited an agent or attorney from demanding or receiving any fee other than that the Commissioner of Pensions should direct to be paid him out of the pension allowed, if any, and not exceeding $25.00, 23 Stat. 99; Section 111, Title 38, U. S. C., provided certain fees to be allowed by the Commissioner of Pensions (23 Stat. 99; Section 114, Title 38, U. S. C.), and provided further that:

> Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is

> herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor, * * *.

The constitutionality of these, and similar, acts was sustained by the Courts in the cases of *Phillips* v. *Ballinger*, 37 App. D. C. 46, and *Calhoun* v. *Massie*, 253 U. S. 170, discussed below.

(The material portions of the applicable Statutes will be found printed in full in the Appendix hereof.)

In 1917, during the World War, Congress provided for a new system of gratuities and insurance for the members of the armed forces of the United States and their dependents. The gratuities were designated as compensation. (Act of October 6, 1917, 40 Stat. 398, Section 13, War Risk Insurance Act, and the Act of June 7, 1924, as amended March 4, 1925, 43 Stat. 1311, Section 500, World War Veterans' Act, 38 U. S. C. 551.) Under this system which differed from the Pension system in that it did not permit agents or attorneys to present claims before the Bureau—with exceptions not here material—fees which attorneys might contract for, demand, or receive for preparing papers or for prosecuting any claims for benefits under said acts where the Government consented to be sued in connection with such

claim, were limited. These limitations were sustained by this Court in the case of *Margolin* v. *United States*, 269 U. S. 93, and *Frisbie* v. *United States*, 157 U. S. 160, discussed below.

By an Executive Order of the President of the United States, made pursuant to the Act of July 3, 1930 (46 Stat. 1016; Section 11, Title 38, U. S. C.), the Bureau of Pensions and the United States Veterans' Bureau were consolidated into a new agency of the Government known as the Veterans' Administration, the head of which was designated the Administrator of Veterans' Affairs (Section 2, Act of July 3, 1930, 46 Stat. 1016; Section 11a, Title 38, U. S. C.), who was and is charged with all the duties relating to the Bureau of Pensions formerly imposed on the Secretary of the Interior and the Commissioner of Pensions. Such Administrator also is vested with the powers and exercises the functions of the former Director of the Veterans' Bureau.

These two systems of gratuities or pensions continued until enactment of the Act of March 20, 1933 (Public No. 2, 73d Congress, 48 Stat. 8; Sections 701 to 721, Title 38 U. S. C.). By that Act all public laws granting compensation, pension, disability allowance, and other benefits were repealed (with certain exceptions not here material). A new system was initiated in which all gratuities were designated as pensions. The administrative functioning of the Veterans' Administration continued substantially as before.

Section 493, Title 5 U. S. C., 23 Stat. 101, and Sections 111, 114 and 115, Title 38 U. S. C., 23 Stat. 99 and 101, were not a part of any law, "granting pension" and hence were not repealed. On the contrary they were specifically continued in effect by Section 7 of Title 1 of the Act of March 20, 1933 (48 Stat. 9; Section 707, Title 38 U. S. C.), which provided that the Administrator of Veterans' Affairs should have the authority and power granted by certain enumerated sections, and "such other sections of Title 38 U. S. C., as relate to the administration of laws granting pensions."

To carry into effect the provisions of Public No. 2, 73d Congress, and pursuant to the authority contained therein, the President issued an Executive Order, Veterans' Regulation No. 10, Paragraph XVII of which provides:

> The Administrator of Veterans' Affairs is hereby authorized, under such rules as he may prescribe, to recognize agents, attorneys, or other persons in the presentation of claims. * * * The Administrator of Veterans' Affairs is further authorized to determine and pay fees in pension claims to such persons, agents, and attorneys, and to prescribe rules governing entitlement to and the amount and mode of payment of such fees in accordance with Sections 111, 114 and 115, Title 38, U. S. C. (The entire paragraph is quoted on page 25).

Acting under said Executive Order and the laws above mentioned the Administrator of Veterans' Af-

fairs issued Instruction No. 3–A, Veterans' Regulation No. 10, Sections C and D of which prescribe the conditions under which fees and expenses may be allowed and paid in accordance with said Statutes (Instruction No. 3–A, Veterans' Regulation No. 10, is printed in full at page 53 hereof). This was a revision of the Pension Bureau Regulations on the same subject based upon the same Statutes.

It is believed there is no serious doubt that the Congress has the power to enact such legislation applicable to all pensioners, sane and insane. It has exercised for many years without any distinction being drawn as between competent and incompetent claimants for pension benefits. It would seem no sound basis exists for any distinction between competent and incompetent claimants in this respect. If the United States can protect pension funds until they reach the beneficiary even to the extent of limiting attorney fees which may be contracted for or paid in the cases of competent veterans, as it undoubtedly can under the principles announced by this Court in the case of *Frisbie* v. *United States*, 269 U. S. 93, it seems necessarily to follow that it could do so in the cases of incompetents who are unable to protect themselves. This seems clear from the decisions of this Court in the case of *United States* v. *Hall*, 98 U. S. 343, and *Spicer* v. *Smith*, 288 U. S. 430.

In the Hall case the guardian was indicted and convicted of embezzling pension money paid to him for the benefit of his ward. For the defendant it was insisted that when payment of pension money

was made to the guardian, the fund ceased to be within the constitutional control of the United States and that the Federal Statute penalizing a guardian embezzling such fund was unconstitutional and void. After stating this argument the opinion proceeds (at page 359):

> * * * But the court is unhesitatingly of a different opinion, for several reasons: 1. Because the United States, as the donors of the pensions, may through the Legislative Department of the Government, annex such conditions to the donation as they see fit, to insure its transmission unimpaired to the beneficiary. 2. Because the guardian no more than the agent or attorney of the pensioner is obliged by the laws of Congress to receive the fund; but if he does, he must accept it subject to the annexed conditions. 3. Because the word "guardian", as used in the Act of Congress, is merely the designation of the person to whom the money granted may be paid for the use and benefit of the pensioners. 4. Because the fund proceeds from the United States, and inasmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it passes into the hands of the beneficiary, which is all that is necessary to decide in this case. 5. Because the elements of the offense defined by the Act of Congress in question consist of the wrongful acts of the individual named in the indictment, wholly irrespective of the duties devolved upon him by the state law. 6. Because the theory of the defendant that the Act of Congress aug-

> ments, lessens, or makes any change in respect to the duties of a guardian under the state law is entirely erroneous, as the Act of Congress merely provides that the pension may be paid to the person designated as guardian, for the use and benefit of the pensioner, and that the person who receives the pension, if he embezzles it or fraudulently converts it to his own use, shall be guilty of a misdemeanor, and be punished as therein provided.

In its opinion in the case of *Spicer* v. *Smith*, 288 U. S. 430, this Court, while holding that the United States has no proprietary interest in pension (compensation) after payment to a guardian of an incompetent veteran of the World War, used the following significant language (pages 434–5):

> The provisions for exemption, nonassignability, and suspension of payments plainly imply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose to safeguard to beneficiaries the appropriations and payments made for their benefit (*United States* v. *Hall*, 98 U. S. 343, 353. *Westfall* v. *United States*, 274 U. S. 256) and evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to protect themselves. * * *
>
> Petitioner cites *United States* v. *Hall*, supra. The question there was whether Congress has power to prescribe punishment for the embezzlement by guardians of pension money

paid them in behalf of their wards. The indictment showed that the money alleged to have been embezzled was the property of the accused guardian's ward. The court held that to insure transmission unimpaired to the beneficiary the United States might annex such conditions to the donation as it deemed appropriate and that the guardian was bound to accept the payment subject to the terms of the grant and that Congress had power to protect its gift until it passed into the hands of the beneficiary.

In the case of *Frisbie* v. *United States*, 157 U. S. 160, this court held that the Congress had authority to grant or to withhold pensions, to determine and fix conditions under which applications therefor shall be prosecuted and to prescribe the conditions under which others may assist in procuring pensions. Conviction for violating such restrictive provisions was affirmed. Likewise, in the case of *Margolin* v. *United States*, 269 U. S. 93, this court held that the Act approved May 20, 1918, 40 Stat. 555 limiting the fees of attorneys in the preparation of papers in connection with claims before the Bureau of War Risk Insurance (now Section 500, World War Veterans' Act, as amended March 4, 1925, 43 Stat. 1311) was constitutional and that the only compensation permitted agents or attorneys for services of this character was such as provided therein, and none other. Conviction in this case was also affirmed.

The constitutionality of the statute, 23 Stat. 98, 99, and 101, referred to above was upheld by the

Court of Appeals of the District of Columbia in *Phillips* v. *Ballinger* (37 App. D. C. 46), the Court saying:

> The right to appear before the Interior Department is not an inherent right, but a privilege granted by law and subject to such limitations and conditions as are necessary for the protection both of the Department and the Public.

(The case involved the question whether the provisions of the Statute concerning disbarment violated the "due process clause." Held, it does not.)

The limitations were imposed by Congress under the power to declare war and provide for the national defense. That such legislation is within its power, this Court has determined in the cases already cited. Further, attention is also invited to the case of *Calhoun* v. *Massie*, 253 U. S. 170, wherein it was held that Congress had the authority to control the conditions under which claims against the Government might be prosecuted, and to protect claimants from improvident bargains and the Treasury against the possibility of frauds or impositions. In that case the contract was made before passage of the act limiting the fee. It was nevertheless held that the Act does not contravene the United States Constitution (Fifth Amendment). The plaintiff had contracted with defendant for a fee of 50% of claim. Congress in authorizing payment of the claim limited the fee to 20%. The court said (at page 173):

> For nearly three-quarters of a century Congress has undertaken to control in some

> measure the conditions under which claims against the Government may be prosecuted. Its purpose has been in part to protect just claimants from extortion or improvident bargains, and in part to protect the Treasury from frauds and imposition. See *United States* v. *Van Leuven*, 62 Fed. 52, 56. * * * Congress has manifested its belief that the causes which gave rise to laws against champerty and maintenance are persistent. By the enactment, from time to time of laws prohibiting the assignment of claims, and placing limitations upon the fees properly chargeable for services, Congress has sought both to prevent the stirring up of unjust claims against the Government and to reduce the temptation to adopt improper methods of prosecution which contracts for large fees, contingent upon success, have sometimes been supposed to encourage. The constitutionality of such legislation, although resembling in its nature the exercise of the police power, has long been settled (*Marshall* v. *Baltimore & O. R. Co.*, 16 How. 314, 336, 14 L. Ed. 953, 962; *United States* v. *Hall*, 98 U. S. 343, 354, 25 L. Ed. 180, 183, 185; *Ball* v. *Halsell*, 161 U. S. 72, 82, 84, 40 L. Ed. 622, 625, 626, 16 Sup. Ct. Rep. 554.

The contention was urged, as in the instant case, that the prohibition did not extend to payment out of funds other than those derived from the claim. On this point the Court said:

> * * * It is urged that the act here in question should be construed as limiting only the proportion of the specific funds received

> from the government which may be applied to payment of attorneys' fees; but the second paragraph of the law leaves no room for construction. It provides that "it shall be unlawful for any attorney * * * to receive any sum which in the aggregate exceeds twenty per centum" of the claim * * *.

So far as the Superior Court's opinion is based upon the view that the Government's power, or, the operation of the Federal Statute, ceased when the pensioner or his guardian received the money, a complete answer to that position will be found in the opinion of this Court in the case of *United States* v. *Hall*, supra, wherein this Court held that Congress had the power to protect the fund in question against unauthorized conversion to the use of another "and to secure its safe and unimpaired transmission to the beneficiary" and had exercised such power. This was not modified, but was confirmed by the recent decision of *Spicer* v. *Smith*, supra. In principle, those decisions, control the present case.

It has been determined by this Court in the cases heretofore cited that the United States has the power and authority to limit fees which beneficiaries may pay to their attorneys, and which attorneys or agents may demand, charge, or collect, and to provide punishment for the violation of such restrictive statutes. It has also been determined that the United States may constitutionally protect the fund in question at least until it reaches the hand of the beneficiary, by prescribing penalties for embezzlement and mis-

appropriation of such funds by a guardian. *U. S.* v. *Hall*, 98 U. S. 343. It seems clear that such protection must exist as to that class of claimants who need it more than any others, to wit, incompetent and minor claimants. There does not appear to be any sound reason why the power of the United States to place a limitation or prohibition upon a fee to be charged in pension cases should be held to apply only to competent persons. If there be any reason for a distinction, the converse would seem more logical. In fact, the reasons in support of the existence and exercise of the power apply with equal force to competent and incompetent claimants.

On this point the language used by the Court in the case of *In Re Shinberg*, 263 N. Y. S. 354, is persuasive. In this case the attorney, upon the solicitation of the committee of the insane veteran, filed a suit in the Federal District Court on a contract of War Risk Insurance, which suit was for lack of jurisdiction dismissed. Thereupon the claim was allowed and paid and the attorney, joined by the committee, petitioned the Supreme Court, New York County, for a fee amounting to 10% of the insurance so paid; which application was allowed over the objection of the Administrator of Veterans' Affairs. The objection, as in the instant case, was on the ground that the fee was illegal because contrary to Federal Statute. The court, Appellate Division, in reversing the judgment, said (at page 358):

> * * * the necessity for such a statute (referring to Section 500, World War Veterans'

> Act) must be apparent, especially in view of the great need of protection for people who really are wards of the court and who in the absence of such statutory provisions would, in many cases, be preyed upon by the unscrupulous. Because it safeguards and protects the unfortunates who are wholly dependent upon the Government for support, this statute should be rigidly enforced.

There is some intimation in the opinion of the Superior Court that the question involved may be determined on another ground (R. 13), namely, that the matter was solely within the authority of the Common Pleas Court of Allegheny County and that the Administrator had no authority to object to the allowance of the fee. *The question whether the Veterans' Administration should have objected to payment of the fee has absolutely no bearing on the legality thereof.* In filing an objection in the State Court the Chief Attorney of the Veterans' Administration was merely discharging the duty placed upon the Administrator by the Federal law, viz, Section 21, World War Veterans' Act, 38 U. S. C. 450, to the following effect:

> whenever it appears that any guardian * * * is attempting to collect fees * * * in excess of those allowed by law for the duties performed or expenses incurred, * * * the director (Administrator) is hereby empowered by his duly authorized attorney to appear in the court * * * and make proper presentation of such matters to the court.

It is immaterial whether the illegality complained of arises out of a Federal or State statute, rule, or regulation. In the case of *In Re Shinberg, supra,* the Administrator by his duly authorized attorney objected to the fee on the ground that it was contrary to Federal Statutes; and appealed from a judgment of the lower court allowing such fee. The issue was, in principle, exactly as in the instant case. In reversing the judgment the Appellate Court said (page 358):

> This court will not affirmatively join in a violation of the rules governing attorneys' fees in such Federal matters as the war risk insurance. The amount involved in the assignment does exceed the allowance permitted by the Federal rule. * * * The claim in the sum of $1,500 is disallowed.

In accord with the New York case are the Mississippi cases of *Hines* v. *Minor,* 145 So. 507, and *Hines* v. *McCoy,* 159 So. 306, and in the case of *Hines* v. *Paregol,* 77 Fed. (2d) 953, the Court of Appeals for the District of Columbia, in reversing a judgment for attorney fees allowed by the Supreme Court of the District, after quoting Section 21, said (at page 954):

> In our opinion, under these statutory provisions, the appellant was entitled, and in duty bound, to appear in this case in the lower court and represent the interests of the ward, for otherwise the ward would have been without counsel when sued by his guardian. It follows that appellant (the Administrator of Veterans' Affairs) was entitled to prosecute

> the present appeal and to appear in this court either as Administrator of Veterans' Affairs, or as next friend of the ward. *Automobile Brokerage Corporation* v. *United States*, 59 App. D. C. 243, 39 F. (2d) 288.

To the same effect where the illegality of the fee arose under State Statute, see *Hines* v. *Clark*, 191 N. E. 870 (252 N. Y. S. 777).

In the case of *Hines* v. *Hook*, 89 S. W. (2nd) 52, the court said, at page 55:

> In the Bole Case the court merely quoted the above excerpt from the Glenn Case as decisive of the question. We do not understand that the right of appeal from one State Court to another may be determined by an act of Congress; hence, if appellant has that right, it must be derived from the Missouri Statute law. Does the fact that the national government has created the estate which is in the nature of a trust fund (38 U. S. C. A., S. 422 and 450), has designated the administrator as the proper officer to see that the purpose of the trust is carried out (38 U. S. C. A., S. 425, 426), has charged him with that duty, and has authorized him to go into the state courts for that purpose (38 U. S. C. A., S. 450), coupled with the act of the Missouri Legislature (Section 606, supra) which recognizes appellant's interest by authorizing him to enter his appearance in proceedings in the probate court relating to such estates, vest him with the pecuniary interest necessary under our statute to authorize this appeal?

Answering this question the Court, after citing and quoting from the decision in *U. S. Veterans' Bureau* v. *Thomas*, 159 S. E. 159, said (page 56):

> We are of the opinion that appellant had sufficient interest to prosecute the appeal.

It will thus appear that the instant case should not have been decided on the alternative ground stated (R. 13). In objecting, the Administration was simply carrying out the intent of the Federal law. It is obvious that the right to appear in a state court, as a party to an action therein, is derived from State Law, Statute, or common law. The law of Pennsylvania, Section 788, Title 20, Purdon's Pennsylvania Statutes (printed at page 68 hereof) authorized the Veterans' Administration to appear in this case, and is in accord with the intent of the Federal Statute respecting supervision of guardians of Administration beneficiaries. See *In Re Siglin*, 161 Atl. 530.

It is clear from the authorities cited that the Congress has authority to limit the fee that may be charged for presenting claims on behalf of veterans in connection with pension or other benefits; and that it has done so with respect to all benefits payable to or on account of veterans, whether pension, compensation, or insurance, and with respect to all veterans, sane or insane.

2. The United States Statutes and Regulations are applicable to this case, and are binding upon the State Court, Article VI, Constitution.

The Superior Court (R. 12–13) questioned whether the services rendered in this case, whereon the de-

manded fee was based, fell within the Regulation (Veterans' Regulation No. 10) but held that if they did the Regulations and the Statutes would not be binding upon the State Court for the reason that they would not apply to the money after it had been paid by the Veterans' Administration to the guardian of the veteran, citing in support thereof *McIntosh* v. *Aubrey*, 188 U. S. 122; *State ex rel. etc.* v. *Commissioners* 294 Pac. 915; and *Spicer* v. *Smith*, 288 U. S. 430 (R. 12–14). The court concluded (R. 14):

> After giving this case careful consideration, we have come to the conclusion that when the money was given to the guardian, appointed by the court, it lost the impress of Government money, and the control of the estate is wholly within the province of the common pleas court.

These three cases, as well as the later case of *Trotter* v. *Tennessee*, 290 U. S. 354, were concerned with the question of exemption from the claims of creditors and from taxation. The first was a case arising under Section 4747, Revised Statutes, 17 Stat. 576, 38 U. S. C. 54, wherein it was claimed the exemption provided by such statute prevented the sale on execution of real estate purchased by the pensioner, who was sui juris, out of pension funds. This court held that the words "* * * due or to become due * * *" indicated an intent to protect the pension only while in the course of transmission to the pensioner; and that when paid to the pensioner it had "* * * inured wholly to his benefit."

The second case, *State of Kansas ex rel etc.*, v. *Commissioners, supra*, which concerned a claimed

exemption from taxation by virtue of Section 22, World War Veterans' Act, 38 U. S. C. 454, need not be considered since it reached the correct conclusion upon an erroneous basis as is clear by comparison with the case of *Trotter* v. *Tennessee*, *supra*.

The decision in *Spicer* v. *Smith*, 288 U. S. 430, upon which the Superior Court relies, while involving implicitly the same Section 22, World War Veterans' Act, held merely that when a benefit is paid the guardian of a veteran title thereto passes to the beneficiary and the money is no longer "public funds" belonging to the United States. As pointed out herein before, however, this court went on to point out the safeguards thrown around the funds in the hands of a guardian, by the Federal Statutes, and referred specially to the prior case of *United States* v. *Hall*, 98 U. S. 343, wherein this court held that the Congress has authority to protect the funds in the hands of a guardian and unexpended for the benefit of the pensioner ward. Further, in the case of *Trotter* v. *Tennessee*, 290 U. S. 354, this court explicitly refrained from passing upon the point whether the exemption from taxation provision of Section 22, World War Veterans' Act, applies to payments in the form of money while in the hands of a guardian. On this question the Supreme Court of Iowa, in *Manning* v. *Spry*, 96 N. W. 873, held that, by virtue of Section 4747 Revised Statutes, supra, such funds in the hands of a guardian were exempt. And, as pointed out under 1 above, the Congress has exercised the authority which it has under the Con-

stitution to protect the funds in the hands of a guardian of a veteran.

From the above, it is clear that the passage of title to the funds in question is not determinative of this case. Further, as was stated in the beginning, the source or nature of the funds is not wholly determinative of the illegality of the fee. It will be shown below that not only is this true, but that the ownership of the funds has no bearing on this question; but before this becomes of moment it is necessary to inquire whether the court was correct in holding that the services in this case do not fall within the Federal Statutes and Regulations. The Superior Court, as pointed out above, did not decide this point (except by implication (R. 12)), but referred (R. 12) to the opinion of the court below which said (R. 6):

> In the first place, Mr. Sherrard, in representing the guardian at the Washington hearing, was presenting neither an original claim nor a claim for increase. The original claim of the soldier had long since been presented and determined. Moreover, at the time of the hearing in March 1934, all awards of compensation to Stein had been set aside and hence the guardian's claim was not for increase of an existing allowance. What the guardian, through Mr. Sherrard, was claiming was that the previous award should be reinstated. The language of Regulation No. 10 cannot reasonably be held to apply to a claim of such character. Indeed, the language of the Presidential Order would indicate that the fees which the Veterans' Administrator was

> authorized to determine and pay were to be payable from awards which the attorney had aided in procuring. In the present case it is not proposed to pay Mr. Sherrard from any monies which may hereafter be awarded to the incompetent. We can find no statute or regulation fixing the fee to be charged for services in connection with reinstatement of an original award. Even the statute (38 U. S. C. A. 551) which limits to $10 an attorney's fee in a pension case by its terms applies only to fees "for such assistance as may be required in the preparation and execution of necessary papers in any application to the Bureau." This statute is inapplicable since the present is not a case of assisting in the preparation or execution of claim papers.

It is believed that the fee does not fall within the limitations of Section 500, World War Veterans' Act, 38 U. S. C. 551. However, if the claim, as insisted by the court, was not one for pension but was for compensation, or rather reinstatement of compensation previously allowed under the World War Veterans' Act, and claimed under the Pension Act, Public No. 2, 73d Congress, as amended, then the services rendered were illegal and no charge whatever could be made therefor—except $10 for preparation of papers in a claim under said act, and fees allowed by a Federal Court in a suit on insurance. In other words, the Veterans' Administration could not recognize an attorney, as such, in a claim for compensation under the World War Veterans' Act. Mr. Sherrard did appear, thus evidencing the fact

that necessarily the claim asserted was under the later Act (Public No. 2), which permitted such appearance before the Board in the Veterans' Administration. Said Act (43 Stat. 1311) provides:

> * * * no claim agent or attorney * * * shall be recognized in the presentation or adjudication of claims under * * * the World War Veterans' Act, * * * and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau (Administration) shall not exceed $10 in any one case. * * * Any person who shall, directly or indirectly, solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor * * *.

Surely no court, State or otherwise, would aid or abet one in violating the plain provisions of the Act. *In Re Shinberg, supra.* In a proper case, however, a court of probate could allow a fee of $10 within the terms of the act, for there is no *method of payment prescribed*, as in the Pension Acts. Nor can respondent escape this difficulty on the ground that Section 500 is repealed by said Public No. 2, for said section, being one not granting benefits was not repealed by Section 17, Public No. 2, *Conlon* v. *Adamski*, 77 Fed. (2d) 397, and *Lucas* v. *United States*, 80 Fed. (2d) 372. The former case holds illegal a fee contrary to the provisions of Section 500, the latter sustains a conviction for charging and receiving a fee in excess thereof.

There is a further reason why this case does not fall under Section 500, World War Veterans' Act. At the time the services were rendered, that is on the forenoon of March 28, 1934, the only Act whereunder the claimant had any rights whatever was Public No. 2, 73d Congress, as amended by Public No. 78, 73d Congress, and claims under that Act were for pensions (Section 1) since the veteran's case did not fall within the saving provisions of Section 17 thereof, or of the amendment. It is true, but of no significance to the issues in this case, that on that same day, March 28, 1934, the Congress, by enactment of Public No. 141, 73d Congress, restored this veteran to a pensionable status.

The claim being one for a pension, it is immaterial—except only as to the *amount* of the fee that might be allowed under the Pension Fee Acts—whether it was an original claim or a claim for an increased pension. The only right the attorney had to present the claim—whatever it's nature may have been—was derived from the Pension Fee Statutes and the Regulations. In *Phillips* v. *Ballinger*, 37 App. D. C. 46, *supra*, the court held that:

> The right to appear before the Interior Department is not an inherent right, but a privilege granted by law and subject to such limitations and conditions as are necessary for the protection both of the Department and the public. * * *

The attorney had no right to render the services—i. e., appear before the Board of Veterans' Appeals

as an attorney—under any other law or regulation (was prohibited therefrom by the former World War Veterans' Act) and did in fact qualify as an attorney and appear as such under the provisions of the Pension Fee Statutes (Sections 111 to 116, Title 38, U. S. C.), the Regulation (Veterans' Regulation No. 10) and the Instruction No. 3–A, supra. The fee payable, if any, is prescribed by the Statute, 38 U. S. C. 111–116, as is the *method of payment*—i. e., out of the pension, if any, awarded. The Executive Order issued by the President, Veterans' Regulation No. 10, Paragraph XVII merely authorized the Administrator to prescribe the rules with respect to practice of attorneys before the Veterans' Administration and with respect to the payment of fees therefor, in so far as his authority extended under Section 7, Public No. 2, 73d Congress; and the rules adopted, Instruction No. 3–A, were a revision and continuance of the rules of practice in effect in the Pension Bureau—adopted under authority of the same statutes—prior to its consolidation with the Veterans' Administration, as related under 1 of this brief.

The instant case therefore narrows down to that of a pension attorney, admitted to practice before the Veterans' Administration under the Pension Statutes and the regulations and rules promulgated pursuant thereto, who, in complete defiance of such laws and regulations, contracts with a claimant's guardian to charge, and does charge, a fee for services rendered thereunder, which fee is in violation thereof both as to amount and method of payment;

which contract is upheld by the Superior Court on the ground that the law and regulations are not applicable, or if applicable they are not binding on the State Courts. That the laws and regulations are applicable to this case has been clearly shown, and it is not thought that any lengthy consideration is necessary to demonstrate that they are binding on the Superior Court. It has been shown that the laws in question are valid under the Constitution (Argument 1 hereof) and Article VI of the Constitution makes such laws the "supreme law of the land and the judges in every State shall be bound thereby anything in the Constitution or laws of any State to the contrary notwithstanding." (See the cases cited under 1 and 3 hereof.)

3. The fee allowed by the Superior Court was illegal for (a) it was contrary to the statutes as to amount, and (b) it was contrary to the Statutes and the Regulations (Executive Orders) as to method of allowance and payment.

The amount of the fee is prescribed by 38 U. S. C. 114, 23 Stat. 99:

> * * * In all cases where application is made for pension, and no agreement is filed with the commissioner as herein provided, the fee shall be $10 and no more. And such articles of agreement as may be filed with the Commissioner of Pensions are not authorized, nor will they be recognized except in claims for original pensions, claims for increase of pension on account of a new disability, in claims for restoration where a pensioner's

> name has been or may hereafter be dropped from the pension rolls on testimony taken by a special examiner, showing that the disability or cause of death, on account of which the pension was allowed, did not originate in the line of duty, * * *.

And by Instruction 3–A, Section D, under Veterans' Regulation No. 10, the fee could not exceed $10, although the Pension Attorney under Instruction 3–A, Section C–12, could have claimed expenses. Under the same law and regulations, the claim for the fee and expenses must be presented to the Veterans' Administration, and the fee, if any allowed by the Administration, is payable out of the pension payments allowed. The expenses after approval by the Chief Attorney or the Solicitor (C–12, Instruction No. 3–A) may be paid by the claimant.

Any fee charged otherwise is illegal. Said Section 114 provides:

> * * * Any agent or attorney or other person instrumental in prosecuting any claim for pension, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or any agent, attorney, or other person instrumental in prosecuting any claim for

> increase of pension on account of the increase of disability for which pension was allowed, who shall directly or indirectly contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, * * *

Furthermore, any contract for a fee made by an attorney with a claimant may be rejected by the Administrator, as successor to the Commissioner of Pensions, 38 U. S. C. 115; and no fee whatsoever may be charged in connection with an application for arrears of pension, 38 U. S. C. 116. It is clear that no fee in excess of $10.00 could be allowed in any event, that the determination of a fee *vel non* is for the Administrator, and that a fee in violation of the statute is illegal because prohibited.

An exhaustive search reveals no cases or authorities to the contrary. On the other hand, in addition to the cases cited under points 1 and 2 hereof the following authorities are directly in point and sustain our position on the points discussed.

The Circuit Court of Appeals for the Sixth Circuit in the case of *Welty* v. *United States*, 2 Fed. (2d) 562 (which was a criminal prosecution for the charging of a fee in excess of that allowed by law (Section 13, World War Veterans' Act), and in which the defense was that the fee was paid by one who was the guardian of the veteran from his own (the guardian's) funds)—observed at page 564

> if, as the Government contends, * * * these proceedings were more or less of a

> subterfuge intended to hide the actual transaction, and if the actual agreement, though made with the father, was made by him on behalf of his son, and was that the defendant should receive one-third of the amount allowed by the Government to the son—then the verdict would be just.

In other words the prohibition or limitation is on the charging of a fee, not on the funds out of which it may be paid.

In the case of *United States* v. *Moyers*, 15 Fed. 411, the court instructed the jury:

> After the pensioner receives his money it is his own, and he may do with it what he pleases, except to pay his agent or attorney any greater sum than ten dollars ($10) directly or indirectly.

Not only have the courts of the United States spoken with regard to the question here presented, but the courts of the several states have uniformly sustained this legislation. In the case of *Hall v. Kimmer*, 61 Mich. 269, it was held that the veteran might recover from his attorney $150 already paid for services in prosecuting a claim because the transaction was "absolutely forbidden by statute" and "illegal." The court in *Smart* v. *White*, 37 Me. 333, in discussing a contract for fees in a case of this character, held that if there was such a contract it was "illegal and void." The Court of Appeals of Kentucky in *Christie* v. *Steger's Admr.*, 21 Ky. L. Rep. 1799, in declining to enforce a contract for fees in prosecuting a claim for pension, held that it "was in violation of Federal

Statute" which was intended not only to protect the pensioner but the Government as well, and that a "palpable violation of said statute should not be treated with indifferences, nor a violation thereof encouraged or upheld by the courts."

The courts of the various states have uniformly applied the provisions of the Federal Statutes and Regulations limiting fees to cases in which the beneficiaries are not sui juris and are under guardianship and in which their estates are, of course, being administered by the State Courts. In addition to the Shinberg case, supra, attention is invited to the following cases:

In the case of *In Re Roy C. Minor*, 145 So. 507, wherein objections were filed by the Administrator of Veterans' Affairs—as in the instant case—the Supreme Court of Mississippi sustained the Chancery Court in denying the guardian's petition for authority to pay his attorney a fee greater than that allowed by law (Section 500, World War Veterans' Act, supra) for presenting a claim for war risk term insurance, and held that the estate of the ward could not lawfully be charged any greater fee than authorized by the United States Statute. In the case of *Hines* v. *McCoy*, 159 So. 306, likewise a case wherein objections were filed by the Administrator, the same court said (page 307):

> The main argument in justification of the allowance of the $1,300.00 fee, and the Chancellor's act in sustaining the demurrer to the petition of Hines, the Administrator of Vet-

erans' Affairs, is that the chancery court is not controlled by the Federal authorities in the administration of estates, after the money has passed into the hands of the guardian, and that the Federal Administrator has no standing to intervene and question any act done in the administration, because he has no such interest as would warrant his intervening, and that it would be a meddling by Bureaus of the Federal Government to allow a Federal Administrator to control the State Courts.

We do not think this contention can be maintained. There is no effort, as we understand the proceeding here, for the Federal Government to undertake to control the state court, but the Government seeks to see that the money allowed to War Veterans through insurance is properly and economically administered. The Federal Government has the right to provide, as a condition of the policies and the allowances, as it has provided, that not more than a given amount ($10.00) shall be allowed for procuring the money from the Government for war veterans. * * *

On the specific point that the Federal Statute applies only to the original claim and not to action after the claim is established, which seems to be the view of the Superior Court, the case of *United States* v. *Reynolds*, 48 Fed. 721, is directly in point. In that case the pensioner had been duly admitted to the rolls, but being ignorant and unable to prepare the then necessary voucher, he procured an attorney to fill out the vouchers and forward them to the pension agent. When the check arrived, the attorney

retained out of the proceeds thereof a fee of $10.00, for which action he was indicted. The defense, in part, was that defendant was not "a person instrumental in prosecuting a claim for pension." On this point the court said (page 722):

> * * * The pensioners deserve and receive at the hands of the government the most careful and tender consideration. Many of them are helpless; often they are ignorant, and exposed to extortion. For this reason congress has enacted laws for protecting them from the rapacity of their agents, not only in the steps necessary for the establishment of their right to be upon the pension rolls, but also in every proceeding which must be taken in order to obtain the installments of their pension. The defendant was instrumental in prosecuting the claim of Danner, within the terms of the section. * * *.

Upon a casual reading of the three cases mentioned below, one might believe they hold contrary to the above-stated views, but a close analysis will show they do not. Two are by United States District Courts and one by the Supreme Court of Rhode Island.

In *United States* v. *Nicewonger* (20 Fed. 438) the District Court, Western District of Pennsylvania, held that the Federal Statute did not apply to a claim for reimbursement for expenses of last illness out of accrued pensions.

In *United States* v. *Brown* (40 Fed. 457) the District Court, Eastern District of South Carolina, held that

the statute did not apply to voluntary donations by the pensioner, but would apply to any solicitation.

In *Southwick* v. *Evans*, 21 Atl. 104, the Supreme Court of Rhode Island said:

> The court after examining several items of the account continued: Allowing "to E. D. McGuinness, in matters relating to the guardianship, and excluding services in procuring the pension, $50", and adding: "In regard to charges for services performed, and expenses incurred, about the pension, we have allowed the guardian compensation for such work and expenses as the pensioner himself would ordinarily have done and incurred, independent of his attorney, if he had been of capacity, being of the opinion that such allowances are not to be regarded as the services of an attorney, agent, or other person in procuring a pension, within the meaning of the United States pension laws, but rather as preparations for the prosecution of the claim."

It is obvious that the first two are not in point. The third case differentiates between the compensation and expenses which may be allowed a guardian for work which the veteran himself, if sui juris, would do, and that which might be done by an attorney. This case (if correct) does not sustain the decision of the Superior Court on any point.

The authorities cited and relied on by petitioner, and others omitted in the interest of brevity, clearly demonstrate that the courts below erred in holding that the Federal Statutes and Regulations pursuant

thereto do not effectually limit the amount of the fee payable.

Not only was the fee illegal as to amount but also as to the method of payment. The same Federal Statutes and Regulations limiting the amount, prescribe an exclusive mode or manner of allowance and payment of such fees as may properly be paid.

The statutory history need not be repeated here. No judicial decision bearing directly on this exact point has been found, except the ruling of the District Court of the United States for the Northern District of Iowa in the case of *U. S.* v. *Van Leuven*, reported in 62 Fed. 52. In overruling defendant's demurrer to an indictment for violating the Act of July 4, 1884 (which is the Act applicable to the instant case), that Court said (at pages 54 and 55):

> * * * Thus an agent, attorney, or other person rendering services in aid of the procurement of a pension, or the increase thereof, may be guilty of a misdemeanor by directly or indirectly contracting for, demanding, receiving, or retaining a compensation in excess of the legal amount, or he may be guilty of a misdemeanor by contracting for, demanding, or receiving his compensation before the allowance of the pension, or in a manner other than that provided in the statute.
>
> * * * * *
>
> * * * The protection of the statute is thrown about all applicants for pensions, even though they may fail in proving that they had been in the military or naval service, within

> the meaning of the pension laws. The sections of the statute restricting the fees legally demandable by agents or attorneys have a double purpose—the one being the protection of the applicant; the other, the protection of the government against fraudulent claims, which might be greatly multiplied if no restrictions in regard to the amount or time of payment of fees were provided. It would greatly narrow the real purpose of the statute if we should read into the same the restriction that its provisions are applicable only in cases wherein a soldier or sailor who had actually been in service was the applicant. Whenever an agent or attorney undertakes to render service in aid of an application for a pension, or for an increase thereof, he then comes within the purview of the statute, and must act within its provisions. * * *

This Court cited the *Van Leuven case* in its opinion in the case of *Calhoun* v. *Massie*, 253 U. S., at page 173, 64 Law Ed. at page 845. The correctness of petitioner's position here apparently was assumed by the Supreme Court of Massachusetts in the case of *Wolcott* v. *Frissell* (1883), 134 Mass. 1, 45 Amer. Rep. 272. The decision therein was that the amount was properly limited by the court below to that prescribed by the Federal Statute.

Adverse counsel may possibly cite the opinion of the Massachusetts Court in *Caverly* v. *Robbins*, 149 Mass. 16, 20 N. E. 450, 2 L. R. A. 745, as contrary to the point just indicated in that there was a judgment for $10.25 for the plaintiff in that case who

sued pensioner for $162.00 alleged to be the reasonable value of his professional services in obtaining the pension for defendant. But that case is not in fact contrary to petitioner's position. The defendant did not appeal and there was nothing before the court except the plaintiff's exceptions to the judgment, which limited recovery to $10.25. It is also probable that that case was controlled by the Act of June 20, 1878, *supra*. The earlier case of *Wolcott* v. *Frissell*, *supra*, was cited in support of the court's conclusion that the plaintiff's exceptions to the trial court's judgment should be overruled.

The same observations may be made as to the Michigan case of *Hall* v. *Kimmer* (1886), 61 Mich. 269, 28 N. W. 96, where the review was invoked by the attorney only, who complained of an allowance of the limited amount prescribed by the Federal Statute. There are other cases, such as *Ladd* v. *Boston*, 64 N. H. 613, which fall in the same category.

Apparently, these cases were all based upon the law in effect prior to the Act of July 4, 1884, 23 Stat., 98, 38 U. S. C. 111–116. Said Act, in Section 1 thereof, contained a proviso saving the rights under contracts entered into under the Act of 1878, *supra*, *U. S.* v. *Van Vliet*, 22 Fed. 641. The 1884 Act, 23 Stat., 98, in the following quoted paragraph, contained new language (below, in italics) which constituted the basis of the practice since that date and the Regulations of the Pension Bureau and its successor, the Veterans' Administration.

> Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand or receive or retain any *greater compensation* for his services or instrumentality in prosecuting a claim for pension or bounty land than is herein provided, *or for payment thereof* at any other time *or in any other manner than is herein provided*, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor, * * *. [Italics ours.] (23 Stat., at page 101. This paragraph is now divided between 38 U. S. C., 112 and 43 U. S. C. 844.)

However, the construction now asserted by petitioner as proper has the sanction of administrative approval over a long period of years, and apparently has not been questioned in any Appellate Court heretofore except as above mentioned in *Phillips* v. *Ballinger*, 37 App. D. C. 46.

In the decision of the Secretary of the Interior in the case of George D. Hilton, June 17, 1896, in Volume 8, Decisions of the Department of the Interior, at page 183 (discussing the Act of 1884), it is said:

> In this connection I remark that by operation of amended section 4785, Revised Statutes, every payment, in compensation for services in prosecuting a claim for pension or bounty land must find its authority in the direction of

> the Commissioner of Pensions. Nor is the statute simply directory in its terms, for it expressly prohibits the demand or receipt of any other compensation than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding $25.
>
> This law is, therefore, mandatory in its terms, and its application is expressly made to rest in the discretion of the Commissioner of Pensions. Yet this is not an arbitrary discretion, but a discretion founded in law, reason, and justice. The Commissioner has power to allow fees, in suitable cases, not exceeding $25.

and again on page 185 it is said:

> From the very nature of the statute regulating the allowance and payment of fees, it is evident that the attorney has had no legal right to collect directly from the pensioner since the enactment of the law of July 4, 1884, whereby the act of June 20, 1878, was repealed.

The statutory language there considered is in substance the same as is here involved.

Mr. Justice Van Devanter, then Assistant Attorney General, had occasion to consider the same statute in an opinion rendered the Secretary of the Interior in 1899 in the case of Margaret E. Davis (Volume X, page 403, Decisions of the Department of the Interior). In the course of an opinion concluding that a claim by the wife of a pensioner for "divided pension" under the Act of March 3, 1899, was not a "claim for pension" within the terms of the Act of 1884, he nevertheless recognized the construction now

urged by petitioner. After referring to certain statutory provisions, this language occurs in said opinion at page 408:

> When the pension is allowed, the fee for the prosecution of the claim, if conducted by an agent, attorney, or other person employed by the claimant for that purpose, is earned, but it can be paid only upon the direction of the Commissioner of Pensions, and then only out of the pension money. * * *

The fee being illegal, the contract therefor was invalid, and the court could not enforce same. It is well settled law, as stated by the Supreme Court of Pennsylvania in *Waychoff* v. *Waychoff*, 163 Atl., 670, that a contract which is illegal or against public policy will not be enforced. See also *Oscanyan* v. *Winchester Repeating Arms Co.*, 103 U. S. 261. In that case this court quoted with approval the following language from the decision in the case of *Hall* v. *Coppell*, 7th Wall., 542:

> The principle to be extracted from all the cases is, that the law will not lend its support to a claim founded upon its violation.

SUMMARY

It will be seen therefore that—

A. The United States has the power to limit fees which may be charged by attorneys for services in presenting pension claims.

B. The United States has by Statute, and Regulations issued pursuant thereto, limited the fees which may be charged for such service.

C. The limitations apply in this case, and any contract contrary thereto is illegal.

D. The payment of a fee may be made only in the manner or mode prescribed by Regulations, viz: directly to the attorney by the Veterans' Administration upon approval by the latter.

E. The Superior Court in deciding this case to the contrary erred.

F. In so deciding the court deprived the petitioner, and the insane veteran on whose behalf he appeared, of a right, privilege, or immunity granted by Federal Law.

CONCLUSION

It is respectfully submitted that for the reasons stated the judgment of the Superior Court should be reversed, with instructions that the petition for the fee be denied with costs against the attorney or the guardian individually and not out of the estate of the insane pensioner.

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APPENDIX

SECTION 2, PUBLIC 536, 71ST CONGRESS, 46 STAT. 1016, 38 U. S. C. 11–A

There shall be at the head of such Veterans' Administration an administrator to be known as the Administrator of Veterans' Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate. Such administrator shall receive a salary of $12,000 a year, payable monthly. Upon the establishment of such Veterans' Administration all the functions, powers, and duties now conferred by law upon the Commissioner of Pensions, the Board of Managers of the National Home for Disabled Volunteer Soldiers, and the Director of the United States Veterans' Bureau are hereby conferred upon and vested in the Administrator of Veterans' Affairs. Such administrator, under the direction of the President, shall have the control, direction, and management of the various agencies and activities enumerated in and referred to in section 1 of this Act, and shall be charged with all the administrative duties relating to the National Home for Disabled Volunteer Soldiers and the Bureau of Pensions now imposed by law upon the Secretary of War and the Secretary of the Interior, respectively. All final decisions or orders of any division, bureau, or board in the Veterans' Administration shall be subject to review, on appeal, by such administrator.

SECTION 4, PUBLIC NO. 2, 73D CONGRESS, 48 STAT. 9, 38 U. S. C. 704

The President shall prescribe by regulation (subject to the provisions of section 1 (e) of this title) the date of the beginning and of the termination of the period in each war subsequent to the Civil War, including the Boxer Rebellion and the Philippine Insurrection, service within which shall for the purposes of this Act be deemed war-time service. The President shall further prescribe by regulation the required number of days of war or peace-time service for each class of veterans, the time limit on filing of claims for each class of veterans and their dependents, the nature and extent of proofs and presumptions for such different classes, and any other requirements as to entitlement as he shall deem equitable and just. The President in establishing conditions precedent may prescribe different requirements or conditions for the veterans of different wars and their dependents and may further subdivide the classes of persons as outlined in section 1 of this title and apply different requirements or conditions to such subdivisions.

SECTION 7, PUBLIC NO. 2, 73D CONGRESS, 48 STAT. 9, 38 U. S. C. 707

The Administrator of Veterans' Affairs subject to the general direction of the President and in accordance with regulations to be issued by the President shall administer, execute, and enforce the provisions of this title and for such purpose shall have the same authority and powers as are provided in sections 425, 430, 431, 432, 433, 434, 440, 442, 443, 444, 447, 450, 451, 453, 455, 457, 458, 459, 459a, 459c, 459d, 459e, 459f, title 38 U. S. C., and such other sections of

title 38 U. S. C., as relate to the administration of the laws granting pensions.

SECTION 111, TITLE 38, U. S. CODE, 23 STAT., 99

Compensation of agent or attorney. No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding $25; nor shall such agent, attorney, or other person demand or receive such compensation, in whole or in part, until such pension shall be allowed. In all claims allowed since June 20, 1878, where it shall appear to the satisfaction of the Commissioner of Pensions that the fee of $10, or any part thereof, has not been paid, he shall cause the same to be deducted from the pension, and pay the same to the recognized attorney.

SECTION 114, TITLE 38, U. S. CODE, 23 STAT. 99

Same; agreement for fee filed; fee in case of failure to file; form, amount paid deducted from fee. The agent or attorney of record in the prosecution of the case may cause to be filed with the Commissioner of Pensions, articles of agreement, without additional cost to the claimant, setting forth the fee agreed upon by the parties which agreement shall be executed in the presence of and certified by some officer competent to administer oaths. In all cases where application is made for pension, and no agreement is filed with the commissioner as herein provided, the fee shall be $10 and no more. And such articles of agreement as may be filed with the Commissioner of Pensions are not authorized, nor will they be recognized except in claims for original pensions, claims

for increase of pension on account of a new disability, in claims for restoration where a pensioner's name has been or may hereafter be dropped from the pension rolls on testimony taken by a special examiner, showing that the disability or cause of death, on account of which the pension was allowed, did not originate in the line of duty, and in cases of dependent relatives whose names have been or may hereafter be dropped from the rolls on like testimony, upon the ground of nondependence, and in such other cases of difficulty and trouble as the Commissioner of Pensions may see fit to recognize them. No greater fee than $2 shall be demanded, received, or allowed in any claim for pension granted by special act of Congress, nor in any claim for increase of pension on account of the increase of the disability for which the pension had been allowed. No fee shall be demanded, received, or allowed in any claim for arrears of pension or arrears of increase of pension allowed by any act of Congress passed subsequent to the date of the allowance of the original claims in which such arrears of pension, or of increase of pension, may be allowed. The articles of agreement herein provided for shall be in substance as follows, to wit: * * *

And if in the adjudication of any claim for pension in which such articles of agreement have been, or may be, filed, it shall appear that the claimant had, prior to the execution thereof, paid to the attorney any sum for his services in such claim, and the amount so paid is not stipulated therein, then every such claim shall be adjudicated in the same manner as though no articles of agreement had been filed, deducting from the fee of $10 allowed by law such sum as claimant shall show that he has paid to his said attorney. Any agent or attorney or other person

instrumental in prosecuting any claim for pension, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or any agent, attorney, or other person instrumental in prosecuting any claim for increase of pension on account of the increase of disability for which pension was allowed, who shall directly or indirectly contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding $500 or imprisoned, not exceeding two years, or both, in the discretion of the court. (Articles of Agreement omitted.)

SECTION 115, TITLE 38, U. S. CODE, 23 STAT. 101

Same; commissioner may reject contract for fees. The commissioner shall have power, subject to review by the Secretary, to reject or refuse to recognize any contract for fees, provided for in section 114 of this title, whenever it shall be made to appear that any undue advantage has been taken of the claimant in respect to such contract.

SECTION 493, TITLE 5, U. S. CODE, 23 STAT. 101

Agents or attorneys representing claimants before department. The Secretary of the Interior may prescribe rules and regulations governing the recogni-

tion of agents, attorneys, or other persons representing claimants before his department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice before his department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with invent to defraud in any manner, deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement.

ACT OF JUNE 20, 1878, CHAPTER 367, 20 STAT. 243, 43 U. S. CODE 842

It shall be unlawful for any attorney, agent or other person to demand or receive for his services in a pension case a greater sum than ten dollars. No fee contract shall hereafter be filed with the Commissioner of Pensions in any case. In pending cases in which a fee contract has heretofore been filed, if the pension shall be allowed, the Commissioner of Pensions shall approve the same as to the amount of the fee to be paid at the amount specified in the contract. Sections forty-seven hundred and sixty-eight, forty-seven hundred and sixty-nine, and forty-seven hundred and eighty-six of the Revised Statutes shall not apply to any case or claim hereafter filed, nor to any pending claim in which the claimant has not

been represented by an agent or attorney prior to the passage of this act.

SEC. 2. Section forty-seven hundred and eighty-five of the Revised Statutes is hereby repealed.

ACT OF FEBRUARY 27, 1877, CHAPTER 69, VOLUME 19, PAGE 252, SECTION 4768, REVISED STATUTES

The Commissioner of Pensions shall forward the certificate of (pensions) (pension), granted in any case, to the agent for paying pensions where such certificate is made payable, and at the same time forward therewith one of the articles of agreement filed in the case and approved by the Commissioner, setting forth the fee agreed upon between the claimant and the attorney or agent, and where no agreement is on file, as hereinbefore provided, he shall direct that a fee of ten dollars only be paid the agent or attorney.

ACT OF JULY 8, 1870, CHAPTER 225, SECTION 10, VOLUME 16, PAGE 193, SECTION 4769, REVISED STATUTES

It shall be the duty of the agent paying such pension to deduct from the amount due the pensioner the amount of fee so agreed upon or directed by the Commissioner to be paid where no agreement is filed and approved, and to forward or cause to be forwarded to the agent or attorney of record named in such agreement, or, in case there is no agreement, to the agent prosecuting the case, the amount of the proper fee, deducting therefrom the sum of thirty cents in payment of his services in forwarding the same.

ACT OF MARCH 3, 1873, CHAPTER 234, SECTION 31, VOLUME 17, PAGE 575, SECTION 4785, REVISED STATUTES

No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding twenty-five dollars.

SECTION 500, WORLD WAR VETERANS' ACT, 1924, 43 STAT. 1311, 38 U. S. C. 551

Except in the event of legal proceedings under section 19 of Title 1 of this Act, no claim agent or attorney except the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and Veterans of Foreign Wars, and such other organizations as shall be approved by the director shall be recognized in the presentation or adjudication of claims under Titles II, III, and IV of this Act, and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau shall not exceed $10 in any one case: *Provided, however,* That wherever a judgment or decree shall be rendered in an action brought pursuant to section 19 of Title I of this Act the court, as a part of its judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered and to be paid by the bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid. Any person who shall, directly or

indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than $500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment.

PARAGRAPH XVI, VETERANS' REGULATION NO. 10

The Administrator of Veterans' Affairs is hereby authorized to recognize representatives of the American Red Cross, the American Legion, the Disabled American Veterans, the Grand Army of the Republic, the United Spanish War Veterans, Veterans of Foreign Wars, and such other organizations as he shall approve, in the presentation of claims. However, no such representative shall be recognized until a certificate has been filed in the Veterans' Administration, under such rules as the Administrator of Veterans' Affairs may prescribe, certifying that no fee or compensation of whatsoever nature shall be charged veterans or the dependents of veterans for service rendered. The rules prescribed by the Administrator of Veterans' Affairs shall contain a provision requiring in each claim the filing of a power of attorney in such manner and form as the Administrator of Veterans' Affairs may prescribe.

PARAGRAPH XVII, VETERANS' REGULATION NO. 10

The Administrator of Veterans' Affairs is hereby authorized, under such rules as he may prescribe, to recognize agents, attorneys, or other persons in the presentation of claims. The rules prescribed by the

Administrator of Veterans' Affairs may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims and the Administrator of Veterans' Affairs may, after notice and opportunity for a hearing, suspend or exclude from further practice before the Veterans' Administration any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner, deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter or by advertisement. The Administrator of Veterans' Affairs is further authorized to determine and pay fees in pension claims to such persons, agents and attorneys, and to prescribe rules governing entitlement to and the amount and mode of payment of such fees in accordance with sections 111, 114, and 115, Title 38, U. S. C.

VETERANS' REGULATION NO. 10, INSTRUCTION NO. 3–A

Subject: RECOGNITION OF PENSION ATTORNEYS AND PENSION CLAIM AGENTS.

For the purposes of Veterans' Regulation No. 10, Paragraph XVII, the following instructions with reference to recognition of Pension Attorneys and Pension Claim Agents in the presentation of claims are hereby issued:

The policy of the Veterans' Administration precludes the admittance to practice as a Pension Attor-

ney or a Pension Claim Agent any person who is an officer or employee, appointive or elective, of any veterans', welfare, or state or county, etc., organization engaged in assisting claimants in presenting claims before the Veterans' Administration without fee or emolument. Furthermore, it is contrary to the policy to permit an attorney or agent to transact pension claims business from or at an office from or at which a veterans' or welfare organization, or an agency of a state or other political subdivision, carries on its work incident to assisting claimants in presenting claims before the Veterans' Administration, or to use the stationery of such an organization or agency in transacting his pension claim business.

Applicants for admission to practice as attorneys will be presumed to have such knowledge of the law and Veterans Regulations governing as to qualify them to render substantial service, but applicants for admission to practice as agents shall be required to prove their fitness to render substantial service by undergoing a written examination testing their knowledge of the law and Veterans Regulations promulgated thereunder, as to which separate instructions will be issued.

A. ADMISSION TO PRACTICE

1. *Pension Attorneys.*—Any person who is an attorney at law in good standing and a citizen of the United States, or has declared his intention to become such a citizen, may be admitted to practice as a Pension Attorney, if not prohibited by law, and represent claimants before the Veterans' Administration, by presenting for that privilege his satisfactory application containing recitals as to the following facts (no particular form of application required):

(a) The applicant's full name, age, permanent post office address, and whether he is a citizen of the United States.

(b) The names and addresses of all courts before which he has been admitted to practice, giving the dates of such admissions. The names of all departments, bureaus and offices of the Government before which he has been admitted to practice, giving the dates of such admissions.

(c) Whether he has ever been disbarred, suspended, or excluded from practice; and if so, the name and location of the court, courts, or executive department by which his disbarment, suspension, or exclusion and readmission were ordered, giving the dates thereof and the grounds upon which he was disbarred, suspended, or excluded.

(d) Whether he has ever been a defendant in a criminal case in court. If so, state in what court or courts, all the circumstances and the result.

(e) Whether he is an officer or employee, elective or appointive, of any veteran or service organization, or an employee of any municipal, county, state or Federal institution, the duties of which are to aid and assist in the prosecution of claims for pension.

(f) The name of the office or employment, if any, which the applicant holds or has, under the Government of the United States, at the date of his application for admission, or has heretofore so held or had, if any, and the date and cause of his separation from such former office or employment.

(g) Each application for admission as a Pension Attorney must be accompanied by oath of allegiance, sworn to before some officer authorized to administer the oath, as follows:

"I, , do solemnly swear (or affirm) that I will support and defend the Con-

stitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

(h) There should also be furnished a duly executed and authenticated certificate from the clerk of a court wherein applicant has been admitted to practice stating that the applicant has been and is duly admitted to practice and in good standing in the court.

2. *Pension Claim Agents.*—Any competent person who is a citizen of the United States, or who has declared his intention to become such a citizen, and who is not an attorney at law, may be admitted to practice as a Pension Claim Agent, if not prohibited by law, and represent claimants before the Veterans' Administration by presenting his satisfactory application for that privilege containing recitals as to the following facts (no particular form of application required):

(a) The applicant's full name, age, permanent post office address, present occupation and for the preceding five years, and whether he is a citizen of the United States.

(b) Whether he has ever been admitted, disbarred, suspended, or excluded from practice before any executive department or bureau of the Federal Government; and if so, the name of such department or bureau and date thereof.

(c) Whether he has ever been a defendant in a criminal case in court—If so, state in what court or courts, all the circumstances and the result.

(d) Whether he is an officer or employee, elective or appointive, of any veteran or service organization,

or an employee of any municipal, county, state, or Federal institution, the duties of which are to aid and assist in the prosecution of claims for pension.

(e) The name of any office or employment, if any, which the applicant holds or has, under the Government of the United States, at the date of his application for admission, or has heretofore so held or had, if any, and the date and cause of his separation from such former service or employment.

(f) A brief statement of the applicant's educational qualifications.

(g) The names and post office addresses of five reputable persons who have an intimate knowledge of the applicant's character and qualifications.

(h) Each application for admission as a Pension Claim Agent must be accompanied by oath of allegiance, sworn to before some officer authorized to administer the oath, as follows:

> I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

3. All applications for admission to practice should be addressed to and filed with the Administrator of Veterans' Affairs, Washington, D. C., who will, after such consideration and investigation as he may deem necessary, take action thereon.

B. SUSPENSION AND DISBARMENT

1. Whenever the Administrator of Veterans' Affairs has knowledge or information that a Pension Attorney or Pension Claim Agent admitted to practice before the Veterans' Administration is or has engaged in unlawful, unprofessional, or dishonest practice, or has been guilty of disreputable conduct, or is incompetent, or has refused to comply with the laws and regulations governing his practice before the Veterans' Administration, the Administrator shall give the accused attorney or agent due notice with a statement of the charge or charges against him, which statement shall be sufficiently specific to permit the accused intelligently to make answer thereto, and shall cite said attorney or agent to show cause within 30 days, which time limit may be extended by the Administrator, why he should not be suspended or disbarred from practice.

2. If said attorney or agent shall fail to file an answer or other pleading, within the time specified, such charge or charges will be taken as confessed and judgment may be rendered as upon default.

3. If an answer, under oath, is filed denying the charges, or so explaining them as to raise an issue thereon, a time and place shall then be set for the taking of testimony. The testimony shall be taken at as convenient a place as possible for both the Government and the defendant, and notice shall be served on the defendant informing him of the time and place at which testimony will be taken for the Government, in order that he may be present and cross-examine the witnesses. Testimony shall be reduced to writing and be signed by the witnesses, unless otherwise stipulated, and may be taken before any

officer authorized to administer oaths for general purposes or before any officer or agent of the Veterans' Administration designated for that purpose. After the testimony has been taken, it will be considered; and the Administrator will suspend or disbar such attorney or agent from practice before the Veterans' Administration or take such other action thereon as the facts warrant.

4. Any attorney or agent will be deemed disreputable in the sense in which that word is used in the foregoing paragraph, and be subject to suspension or exclusion from practice as such, who, after being admitted to practice, knowingly commits or is guilty of any of the following acts, to wit: (a) Presents or prosecutes fraudulent pension or other claims against the United States; (b) demands or accepts any unlawful compensation for presenting or prosecuting any claim before the Veterans' Administration or for advice or consultation concerning such a claim; (c) with intent to defraud has in any manner deceived, misled, or threatened any claimant or prospective claimant by word, circular, letter, or advertisement; (d) who, in the presentation or prosecution of, or in connection with, any matter or business pending before the said Veterans' Administration has as his associate, or employs as his agent, subagent, or correspondent, any person who has been guilty of any of the above mentioned acts, or who has been denied admission to practice, or is suspended or disbarred from practice before said Veterans' Administration, or who himself acts as the associate, agent, subagent, or correspondent of any such person; or who is otherwise and in any manner whatever guilty of dishonest or unprofessional conduct.

C. RULES OF PRACTICE

1. A person having been regularly admitted to practice as a Pension Attorney or Pension Claim Agent by the Administrator of Veterans' Affairs and appearing of record in the Veterans' Administration, may be recognized to prosecute any claim for pension in which the law or regulations do not prohibit the employment of an attorney or the payment of an attorney fee, on filing a power of attorney from the claimant: *Provided, however,* That the Administrator, in his discretion, may recognize such person without compensation in any claim for pension heretofore filed, or that may hereafter be filed, in which the law or regulations prohibit the payment of such fee: *And provided,* That where the power of attorney is in the name of a firm of agents or attorneys some duly qualified member thereof must enter an appearance therein on behalf of the firm.

2. Only a duly executed power of attorney confers upon an agent or attorney the right to present and prosecute a case before the Veterans' Administration. Upon receipt of a duly executed power of attorney, the agent or attorney named therein will be informed of the status of the claim, and will be recognized as the sole agent for the presentation and prosecution of the claim covered thereby so long as the power of attorney is effective.

3. A power of attorney, in order to be recognized as good and valid must be signed by the claimant or his guardian in the presence of two witnesses, neither of whom is the agent or attorney named therein, and be acknowledged before an officer duly authorized to administer oaths for general purposes. A notary public or other officer authorized to ad-

minister oaths for general purposes certifies or is presumed to certify in his certificate to a pension paper that he has no interest direct or indirect in the prosecution of the claim. Therefore, no paper in a pension claim can be executed before the attorney therein without forfeiting his attorneyship rights. The particular claim to which the power of attorney is intended to relate must be specified therein.

4. An agent or attorney shall be required to exercise due diligence in all cases in which he is recognized.

5. Upon the rejection of a claim for pension the agent or attorney of record and the claimant shall be notified of such rejection and the reason therefor.

6. The claimant shall have the privilege of exercising his right at any stage of the claim to revoke a power of attorney and discharge his agent upon a showing of cause deemed good and sufficient by the Administrator.

7. The wilful withholding of an application for pension or evidence by an agent or attorney for any cause shall render such agent or attorney liable to suspension or disbarment.

8. A change of guardian in any case during pendency of a claim for pension shall not affect the question of attorneyship and fee, but no fee shall be allowed to a guardian who prosecutes the claim of his ward or to a firm of attorneys of which the guardian is a member.

9. A transfer, assignment or substitution of attorney shall not be recognized and no agent or attorney shall have the right to make an assignment of any claim in which he has been recognized.

10. Every agent or attorney who shall, directly or indirectly, request of any Member of either House of

Congress, or of any United States Government official or representative (other than one whose duty it is under the law to supervise and administer the laws, rules and regulations governing the granting of pensions), or any organization recognized under Paragraph XVI of Veterans Regulation No. 10, aid or assistance in the prosecution of a pension claim, or who shall, directly or indirectly, request or advise claimant to seek such aid in the prosecution of a pension claim, shall be subject to inquiry respecting his competency to fully represent a claimant and shall be considered as having forfeited his right to any fee in such case.

11. Attorneys and agents shall not be furnished with supplies of Veterans' Administration forms but will be required to have them printed at their own expense and in strict accordance with the official forms prescribed by the Administration. An attorney or agent may insert a power of attorney in his form over claimant's signature in words about as follows: "I hereby appoint ..... as my attorney to prosecute this claim." The claimant's signature must be attested by two witnesses and fully comply with Rule 3—otherwise the power of attorney will be invalid. Every agent, attorney or other person recognized as entitled to practice before the Veterans' Administration, shall submit to the Administrator, in duplicate, copies of all proposed advertising matter, including forms and letter-heads, etc., intended to solicit business before the Veterans' Administration, and if the same be not disapproved by the Administrator, and the agent or attorney so notified within thirty days from the date of filing, the

same shall be held, prima facie, approved. The use by an agent or attorney of the characters "U. S.", or the words "United States", as a part of his title or of the title of his business shall not be permitted. Agents will not designate themselves as attorneys at any time except in a power of attorney.

12. When an agent, attorney or other person incurs any expense in the prosecution of a claim for pension, he must file a sworn itemized account of such expense with the Veterans' Administration and secure the approval thereof by the Chief Attorney if the claim is adjudicated in the field or the Solicitor if in Central Office before demanding or receiving reimbursement from the claimant or pensioner.

13. Attorneys or agents shall not contract for, demand or receive, directly or indirectly, any compensation whatsoever for advice or consultation concerning the pension laws except such compensation as is herein provided, whether a claim has been or is thereafter filed, or no claim is filed, for the person in whose behalf such advice or consultation is had. Any agent or attorney who shall so do shall be regarded as incompetent to prosecute claims before the Veterans' Administration and shall thereby subject himself to suspension or disbarment to practice before the Veterans' Administration.

14. The fee provided in these instructions shall be due and payable only upon the approval of the claim by the Veterans' Administration and then only in the event the attorney or agent has rendered material service in the prosecution of the claim. The mere filing of an application for benefits shall not be deemed to be the rendering of material service in the prosecution of a claim.

15. At the time of allowance of the claim an award of the attorney's fee, if same is found due, will be made and paid by deduction from the pension allowed, but only to the attorney or agent of record at the time of allowance. The attorney to be entitled must have been admitted to practice before the Veterans' Administration and in good standing at the time of such payment.

16. No request of an agent or attorney for consideration of his title to a fee shall be entertained unless the same shall be filed in the Veterans' Administration within six months from the date of the award upon which such fee is claimed.

D. FEES

1. A fee not to exceed $10.00 in any original claim or $2.00 in any claim for increase may be allowed for the successful prosecution of such claim before the Veterans' Administration except where otherwise prohibited by law.

2. Any person who may collect or attempt to collect, either directly or indirectly, a fee contrary to the provisions of these instructions, shall be subject to the applicable penal provisions of the pension laws.

3. The presentation of a claim before a Special Review Board established under section 20, Public Act No. 78, 73d Congress, or to the Board of Veterans' Appeals seeking to maintain a claim which had been allowed under previously existing laws and which had been denied under Public Act No. 2, 73d Congress, will, for purposes of fee, be considered as an original claim.

4. When a claim has been established under Public Act No. 2 or any prior or subsequent legislation and then for any reason rights thereunder are held ter-

minated or claimant has been cited to show cause why they should not be terminated, claim for maintenance of such original claim will, for purposes of fee, be considered as an original claim.

5. A fee not to exceed $10.00 may be allowed for the successful prosecution of an application for excess pension or apportionment and a similar fee may be allowed for the successful defense of an application for apportionment. No fee will be allowed under this provision unless material assistance has been rendered.

E. REQUIREMENTS APPLY TO PRACTICE IN THE PROSECUTION OF OTHER THAN PENSION CLAIMS

1. The requirements relating to recognition of Pension Attorneys and Pension Agents to practice before the Administration as contained in these instructions shall apply in equal force to any attorney or agent seeking to represent a claimant in a claim for benefits of Emergency Officers' Retirement pay or Civil Service Retirement pay except that the schedule of fees as provided for in Paragraph D (1) pursuant to Veterans Regulation No. 10 applies only in pension claims. Care will be exercised in all matters respecting any fee and any effort to obtain or the acceptance of any exorbitant or inequitable fee will subject an attorney or agent to suspension or disbarment and any penalty otherwise imposed by law.

F. RECOGNITION OF GRATUITOUS SERVICES OF A RELATIVE OR FRIEND OF CLAIMANT

1. Nothing contained in these instructions shall be construed as prohibiting recognition of a relative or friend of the claimant who gratuitously and at the

written request of the claimant represents the latter in any case wherein the official of the Administration handling the claim is satisfied as to the bona fide status of the relative or friend as such.

G. BANKS OR TRUST COMPANIES ACTING AS GUARDIANS FOR VETERANS MAY BE REPRESENTED BEFORE SPECIAL REVIEW BOARDS:

1. Banks or trust companies, corporate entities, acting as guardians for veterans may be represented before special review boards as authorized representatives of veterans by any officer or employee thereof including a regularly employed attorney if such employee or attorney represents the corporation in its fiduciary capacity but no fee may be allowed for such services under Rule 8 hereof.

H. Veterans Regulation No. 10, Instruction No. 3, and paragraphs 1, 2, and 7 of Veterans Regulation No. 10, Instruction No. 5, are hereby canceled.

FRANK T. HINES,
Administrator of Veterans' Affairs.

DECEMBER 7, 1933.

PARAGRAPH 2 OF SECTION 21, WORLD WAR VETERANS' ACT, AS AMENDED BY ACT OF JULY 2, 1926, 44 STAT. 792

Whenever it appears that any guardian, curator, conservator, or other person is not in the opinion of the director properly executing the duties of his trust or has collected or is attempting to collect fees, commissions, or allowances that are inequitable or are in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of

the ward or the dependents of the ward, then and in that event the director is hereby empowered by his duly authorized attorney to appear in the court which has appointed such fiduciary and make proper presentation of such matters to the court: *Provided*, That the director in his discretion may suspend payments to any such guardian, curator, conservator, or other person who shall neglect or refuse, after reasonable notice, to render an account to the director from time to time showing the application of such payments for the benefit of such minor or incompetent beneficiary.

Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment or removal of any guardian, curator, conservator, or other person legally vested with the care of the claimant or his estate, or in connection with the administration of such estates by such fiduciaries, when such payment is authorized by the director.

PARAGRAPH 2 OF SECTION 21, WORLD WAR VETERANS' ACT, AS AMENDED BY PUBLIC NO. 262, 74TH CONGRESS, 49 STAT. ——

Whenever it appears that any guardian, curator, conservator, or other person, in the opinion of the Administrator, is not properly executing or has not properly executed the duties of his trust or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then and in that event the Administrator is hereby empowered

by his duly authorized attorney to appear in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters: *Provided*, That the Administrator, in his discretion, may suspend payments to any such guardian, curator, conservator, or other person who shall neglect or refuse, after reasonable notice, to render an account to the Administrator from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law: *Provided further*, That the Administrator is hereby authorized and empowered to appear or intervene by his duly authorized attorney in any court as an interested party in any litigation instituted by himself or otherwise, directly affecting money paid to such fiduciary under this section.

Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any guardian, curator, conservator, or other person legally vested with the care of the claimant or his estate or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such estates by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Administrator.

SECTION 788, TITLE 20, PURDON'S PENNSYLVANIA STATUTES (PENNSYLVANIA LAWS 647, SECTION 1, APRIL 24, 1929)

In any action brought under any law of this Commonwealth for the appointment of a committee or

guardian for a veteran of any war, or a minor child, or incompetent dependent of a veteran of any war, on whose account benefits of compensation or insurance or other gratuity is payable by the United States Veterans' Bureau, or its successor, or upon the filing of any petition or account by any such committee or guardian of any such person, notice of such action, or of the filing of such petition or account, and of the hearing thereon, shall be mailed the attorney of the United States Veterans' Bureau office having jurisdiction over such person. In all such cases, the United States Veterans' Bureau, or its successor, shall be a party in interest, and a certified copy of each account filed in the court shall be supplied the said bureau by the committee or guardian.

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FILE COPY

NO. 659

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

FRANK T. HINES, Administrator of Veterans' Affairs, United States Veterans Administration, Petitioner,

v.

MINNIE STEIN, as Guardian of the Estate of EDMUND J. STEIN, a Weak-Minded Person.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA

Petition for Certiorari Filed December 27, 1935
Certiorari Granted February 3, 1936

BRIEF FOR APPELLEE.

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SMITH BROS. CO. INC., LAW PRINTERS, 208-212 GRANT STREET, PITTSBURGH, PA.

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ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA

BRIEF FOR APPELLEE.

The question involved in this appeal is a much narrower one than has been indicated by the Veterans' Administration. It is whether the State Court, which has sole jurisdiction of the appointment of a guardian for an incompetent veteran and the control, management, conservation and application of the funds of his estate, can be limited by or subjected to restrictions in the management of such estate by any rules or regulations of a Government Bureau.

The Veterans' Administration has seen fit to make use of the machinery of the State Courts in making pay-

ments to incompetent veterans. When payment has once been made to a guardian appointed by the Court, the money loses the impress of Government money, and the management and conserving of the estate is the duty of and wholly within the province of the State Court.

In the present case the Court deemed it to be its duty to conserve the estate of this veteran by having the guardian represented by counsel at the hearing before the Board of Veterans' Appeals in Washington. The Court considered that it was a proper and wise expenditure of money already in the hands of the guardian. It was not concerned with "prosecuting a claim"; it conceived it to be its duty to see to it that this veteran's compensation allowance should not be discontinued arbitrarily and unreasonably. To hold that the Court could be restricted to an allowance of a fee of $2.00 or even $10.00 for this purpose would be to hamstring the Court in the management of the veteran's estate committed to its care. This cannot be any better stated than has already been done by Judge Marshall (Record p. 6, bottom).

> "There is an equally fatal objection to the position assumed by the Veterans' Administration. It is that neither the Administration nor the United States has any jurisdiction or control over the funds from which the guardian proposes to pay Mr. Sherrard. Such funds belong exclusively to Edmund J. Stein, the incompetent person, and by reason of this Court having adjudicated him to be a weak-minded person, the control and protection of his estate, and the supervision of disbursements by his guardian, are by the Statute (Act of May 28, 1907, P. L. 292) confided to this Court and to this Court alone. All that the Veterans' Administration may do is to appear and be heard as to the legality, necessity and

reasonableness of the proposed expenditures: Act of May 24, 1929, P. L. 647. To hold that the Veterans' Administration has power to determine what portion of an incompetent's estate should be paid out for services of counsel in protecting his rights would be to allow that body to impeach the sovereignty of the Commonwealth of Pennsylvania, by invading the jurisdiction of its Courts and usurping their functions and prerogatives. Manifestly, the Veterans' Administration has not nor ever can attain such omnipotence."

The only theory on which the Veterans' Administration could be held to continue to have control over money in the hands of the guardian would be that it had not lost the impress of Government money. But such a theory is untenable in view of the decisions.

In *Saxe, Guardian, v. Board of Revision of Taxes,* 107 Pa. Supt. Ct. 108, an attempt was made pursuant to instructions from the Veterans' Administration to show that money paid by it to the guardian and by him invested in mortgages could not be held subject to personal property taxes, on the ground that the Act of Congress held such money to be exempt from all taxation. But the Superior Court of Pennsylvania held that the exemption ceased when the money came into the hands of the guardian and that it had lost the impress of Government money. This decision was affirmed by the Supreme Court of Pennsylvania (311 Pa. 545, 166 Atl. 853).

The same question was passed upon by the Orphans' Court of Philadelphia in *Southard's Estate* (16 Dist. & Co. 751). There money received from the Veterans' Administration had accumulated in the hands of the guardian, and it was claimed that such money was not subject to inheritance tax as part of the veteran's estate

at the time of his death. But the court refused to allow this contention holding that after the beneficiary received his fund the exemption from taxation ceased. This case was not carried up.

To the same effect is the decision in *Aubrey v. McIntosh,* 10 Pa. Sup. Ct. 275, where pension money was invested by the soldier in land which later was held not exempt from the lien of a judgment; the exemption did not extend beyond the transmission of money to the pensioner's hands. This was affirmed by the Supreme Court of the United States in 185 U. S. 122. This Court also held in the recent case of *Trotter v. State of Tennessee,* 290 U. S. 354, that exemption from taxation was lost when money paid by the United States to the guardian of an incompetent veteran is converted into land and buildings. There again the impress of Government money was lost.

This same conclusion was reached by this Court in the very recent case from Minnesota known as the Hallbom case, *Pagel v. Pagel,* 291 U. S. 473, 54 S. Ct. 497. There it was held that the exemption in favor of War Risk Insurance does not apply beyond the point where, the beneficiary having died, the remaining installments are paid in a lump sum to the administrator of the veteran's estate. It was held that such money then becomes subject to the claims of creditors and has lost the impress of Government money; it is just plain cash.

It should be borne in mind that this is not a case of an attorney making a charge against and being paid out of a fund obtained for a veteran as the result of successfully prosecuting a claim. Here the guardian had on hand about $2,000.00 representing accumulations from payments previously received from the Veterans' Administration. Further payments had been cut off and the matter was coming up before the Board of Vet-

erans' Appeals. The Court having jurisdiction of the guardian and the managing and conserving of the veteran's estate very properly conceived it to be its duty to see to it that the guardian was properly represented at that hearing which was to be held in Washington. And it directed that a part of the funds already on hand be used for that purpose. To hold that the State Court can be restricted in its management of its ward's estate and in the expending of the funds of the estate in such manner as it deems to be to the best interest of its ward, would indeed be infringing on the sovereignty of the State.

The Veterans' Administration attempts to interpret the case of *U. S. v. Hall,* 98 U. S. 343, as holding that it still retains control of money of a veteran even after payment to a guardian. But all that case holds is that an embezzling guardian is still subject to penalties fixed by Congress, and it goes no further than that. And the World War Veterans' Act of 1924, Section 505, expressly provides for punishment of guardians who shall embezzle such funds.

But this Court has gone a step further in the case of *Spicer v. Smith,* 288 U. S. 430, which involved the question whether funds deposited by a guardian of a veteran in a bank that later failed, were entitled to priority of payment on the theory that such funds remained money of the United States. This Court there held that:

> "Unquestionably payment to the guardian vested title in the ward and operated to discharge the obligation of the United States in respect of such installments."
>
> * * * * * * *
>
> "The provisions for exemption, non-assignability and suspension of payments plainly imply the

passage of title from the United States to the veteran."

But in that same case this Court carefully distinguished that embezzlement by guardians would still hold them subject to penalties fixed by Congress, and that such liability would not be inconsistent with that intention even though the money in the hands of the guardian had lost the impress of Government money.

This view has been followed in the cases cited above, and as we have already pointed out the question narrows itself down to the point of whether the money in the hands of the guardian, having lost the impress of Government money, is still subject to the control of the United States or its instrumentality, the Veterans' Administration, or whether the control thereof is in the hands of the State Court having jurisdiction of the guardian and the funds of the ward. Since such money when paid by the Veterans' Administration to the guardian has lost the impress of Government money, the Government has no power to interfere with the province of the State Court in the management of its ward's estate, even though the ward was a soldier.

While it is perhaps true that since the payment of compensation allowance to a veteran is a gratuity, therefore Congress can impose such conditions on the payment as it sees fit, and can say to the veteran that he shall not pay more than a nominal sum to an attorney who assists him in making out his application, yet an incompetent veteran's estate is in an entirely different class. The improvidence of the competent veteran may need to be guarded against, but the incompetent veteran's estate is under the jurisdiction and control of the State Court which appointed the Guardian. And

that Court alone has power to decide how such estate may best be conserved and how the money already in the hands of the guardian may be expended for the best interest of the veteran ward.

We submit therefore that the Superior Court of Pennsylvania was right in affirming the order of the lower Court, and the Supreme Court of Pennsylvania was right in declining to permit a further appeal.

Respectfully submitted,

DAVID A. REED,
Counsel for Appellee.

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Pittsburgh, Pennsylvania.

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MAY 12 1936
CHARLES ELMORE CROPLEY
CLERK

No. 659

In the Supreme Court of the United States

OCTOBER TERM, 1935

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS, UNITED STATES VETERANS' ADMINISTRATION, PETITIONER

v.

MINNIE STEIN, AS GUARDIAN OF THE ESTATE OF EDMUND J. STEIN, A WEAK-MINDED PERSON

PETITIONER'S MOTION FOR REHEARING

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v.

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PETITIONER'S MOTION FOR REHEARING

Comes now Frank T. Hines, Administrator of Veterans' Affairs, Petitioner, by his attorneys, on behalf of himself and the veteran Edmund J. Stein, for whom he appeared in the courts below as next friend, and moves this Honorable court to grant a rehearing in this cause and thereupon to set aside the judgment heretofore entered by this court and reverse the decree below; and assigns as cause therefor the following:

SUMMARY

This court, in reaching the announced decision, stated:

> Nothing brought to our attention would justify the view that Congress intended to

deprive state courts of their usual authority over fiduciaries, or to sanction the promulgation of rules to that end by executive officers or bureaus.

The broad purpose of regulations in respect of fees of those concerned with pension matters is to protect the United States and beneficiaries against extortion, imposition or fraud. *Calhoun* v. *Massie,* 253 U. S. 170, 173. Dangers of this character are not to be expected in connection with the orderly exercise of authority by state courts over appointees properly entrusted with pension funds. The purpose in view is for consideration when the true meaning of statute or rule is sought.

The basis of this motion for rehearing is that it is believed it can be shown that the Congress intended the limitation to be on the individual and that the insane veteran is entitled to have this limitation recognized by the court and enforced for his protection; and that the decision in principle, is in conflict with former decisions of this court.

ARGUMENT ON POINTS STATED

There can be no dissent from the view expressed by this Court that there should be no conflict between the courts and the Veterans' Administration; and that the Statute cited (38 U. S. C. 450 as amended) contemplates that the Veterans' Administration will be of aid to the Probate Courts in the

case of Administration beneficiaries under guardianship in such courts. The principal purpose of said Statute is to insure that the beneficiary non-sui juris will be represented by counsel not having an adverse interest—viz, the duly authorized attorney of the Administrator—so that the rights of the beneficiary may be protected by a full presentation of all matters, factual and legal, to the court; in short, to avoid a mere ex parte determination of matters pertaining to the insane veteran or other pensioner under guardianship.

What the Congress did impose upon the Administrator is the duty of presenting the matter to the court

> Whenever it appears that any guardian * * * is attempting to collect fees * * * in excess of those allowed by law * * *.

This, of course, referred to collection of attorney's fees or other fees from the ward's assets. This very Statute, as stated by this Court, recognized the authority of the Probate Courts. (Indeed, the Congress in amending the Bill, H. R. 12175, Sixty-ninth Congress, and enacting same so as to provide, as above quoted, refused to enact the original Bill which would have taken insane veterans' estates out of the Probate Courts entirely. See Report No. 1105 on H. R. 12175, 69th Congress, First Session, and debate thereon at pages 12079–83, Congressional Record, June 26, 1926).

What was the intent of the Congress in adopting the above language? What law did Congress have in mind as limiting or prohibiting fees?

It seems entirely clear from such records that Congress *intended* by the legislation in question to obtain limitation of the fees in guardianship cases, and to obtain such limitation under any and *all* laws applicable, State or Federal. It required the Administrator of Veterans' Affairs to *appear in court* to accomplish this in the proceedings there pending.

Nowhere in the history of the legislation (nor in the statute) is there any language affirmatively indicating an intention to exclude from the effort to limit fees, those charged for legal services in connection with claims asserted for persons non-sui juris.

Few State Statutes place any limitation on contractual attorney fees—except in cases of administration or workmen's compensation laws (inapplicable here), hence the Congress must have had in mind the numerous Federal Statutes limiting attorney fees. Following the example of the Federal Government in protecting the interests of veterans, the State of Pennsylvania, from which State the instant case reached this Court, in its State Bonus Law, Act of January 5, 1934, prohibited the charging of fees for services in connection therewith:

> SECTION 13. Any person who charges or collects, or attempts to charge or collect, either directly or indirectly, any fee or other compensation for assisting in any manner a veteran in obtaining any of the benefits to which he or she is entitled under the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not more than five hundred dollars ($500.00), or imprisonment for not more than one year, or both, at the discretion of the court.

If a fee were charged the estate of an *insane* veteran for such services, would it not be in violation of the Pennsylvania Statute? If payment of the fee were to be made from funds paid the guardian by the Veterans' Administration should the Administrator file objections to such fee as "in excess of that allowed by law"? And should not such objections be sustained? Would the case be any different in principle if the veteran himself should become *sui juris* and object to the allowance of such fee?

The court wherein a guardianship is pending stands in the shoes of the ward—to an extent. The guardian is a mere arm of the court, and cannot bind the ward by an illegal contract. *Andrus* v. *Blazzard et al.,* 63 Pac. 888; *Brown* v. *Eggleston,* 2 Atlantic 321.

Further, the court is bound to set up—even though not pleaded—all legal and equitable de-

fenses on behalf of the ward, as held in *Alling* v. *Alling,* 27 Atl. 655 (N. J.); the court saying at page 656:

> The statute of limitations is binding on this court, as well as on the courts of law; and wherever a pecuniary demand will be barred at law it will be barred here, unless there is some circumstance in the case which renders it inequitable for the party entitled to its benefit to set it up. We have seen that this is a simple pecuniary demand, founded on a *quantum meruit,* and I am unable to find in the case any circumstance which renders it inequitable for this defendant to set up the bar of the statute against her mother. She is clearly entitled to the benefit of the plea, and it is the duty of this court, as her guardian, to plead it for her. When she attains 21 years of age, she can do what she pleases with her money, but this court cannot permit her to give it away, even to her own mother.

As this court has said, and reiterated so recently that citations would be gratuitous, this is a Government of law and not of men; there is no basis for the exercise of arbitrary power thereunder—that is, it is supposed, action without authority of law or contrary to law. And it is understood that this would apply as well to a probate court as to an administrative officer or Bureau. It would seem that neither the guardian nor the court could make a valid contract for payment of an illegal

fee, and that the court was in duty bound to give the insane veteran the benefit of the statute enacted by Congress for the protection of all veterans.

If the Congress may not directly limit the authority of a State (probate) Court, may it do so indirectly? And if so, has it evidenced an intent to so act with reference to the present case?

That the Congress, acting within its constitutional authority may and does indirectly limit the scope of permissible action by a State Court is readily demonstrated. A few examples should suffice. For many years after the adoption of the Constitution the Congress did not exercise the authority granted thereby to enact uniform bankruptcy laws. The States during such interim enacted bankruptcy laws and the State courts enforced same. When, however, the Congress did legislate on the subject, it thereby—*and indirectly*—ended the State Courts' jurisdiction of that subject.

Similarly, with respect to the abrogation or modification of contracts generally specifying the medium of payment. Such contracts were enforceable in State Courts until the Congress *indirectly* made them unenforceable, and in the *Gold Clause Cases, Norman* v. *B. & O. Ry., Etc.*, 294 U. S. 239, this Court pointed out that the Act of Congress constituted an express interdiction (P. 307) as against the individual contracting and said (P. 311):

> With respect to those conditions and determinations, the Congress is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is, whether it was reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decision of the Congress as to the degree of the necessity for the adoption of that means, is final.

All of the contracts were enforceable in State Courts prior to the Acts of Congress, but not after—in guardianship cases or other cases. Why? Because Congress, by permissible legislation, occupied the field and dealt with the subject matter in a manner which in fact limited the scope of action by the State Courts (and legislatures) theretofore proper. *The limitation is on the individual or the subject;* and indirectly on the State Court. In short, while the Congress may not change the adjective law of the States, it may, within the limits of the Constitution change the substantive law thereof.

Are courts of probate any the less bound by such laws; are they—usually courts of limited jurisdiction—endowed with any esoteric quality of authority not inherent in courts of general jurisdiction? In the Anglo-Saxon system of jurisprudence courts derived their power over the persons and estates of minors and persons non compos mentis through the King as parens patriae, but both Kings and courts, at least after the Bill of

Rights, acted only in accord with the law in the premises. In the United States the people are the source of such power; and, except as they delegated it to the Federal Government, through the Constitution, retained it in themselves or in the States. There was no direct delegation of probate authority to the United States by the people except as the exercise of delegated powers themselves affects directly or indirectly the exercise of full authority over such persons by the State Courts. As to the veterans who are the beneficiaries of Federal gratuities the Federal Government by the exercise of its constitutional powers does act, in a limited extent, as parens patriae. Such power has been upheld by this court in the many cases cited in petitioner's brief and others with respect to both Indian wards and veterans. These laws have been held applicable to and binding upon State Courts. As was said by Attorney General Bates, 10 Attorney General 521, in another connection:

> Secondly, I suppose it to be equally true, that in case an act of Congress should happen to conflict with a dogma of the "public law", so-called, the dogma must yield to what the Constitution declares to be the supreme law of the land; and the judges in every State shall be bound thereby.

For over fifty years it has been supposed (and held by various courts) that the Congress possessed and has exercised the power to limit fees as we now contend.

The specific provision of the Act of July 4, 1884, *which has never been repealed,* and which by Executive Order—now law—is made applicable to all pension cases, is as follows:

> Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand *or receive* or retain any *greater compensation* for his services or instrumentality in prosecuting a claim for pension or bounty land than is herein provided, *or for payment thereof* at any other time *or in any other manner than is herein provided,* or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor * * *. [Italics supplied.]

In construing a similar statute with respect to Indian Claims, Act of March 3, 1891, this Court, in the case of *Ball* v. *Halsell,* 161 U. S. 72, sustained a *direct* limitation placed upon a Federal Court with respect to attorney fees, and denied recovery in a State court on a contract contrary thereto.

We heretofore failed to bring to this Court's attention a decision which is directly in point, and controlling in the present case, if the principle

therein announced is now followed. We refer to *Capital Trust Co.* v. *Calhoun,* 250 U. S. 208. In that case a contract was made between one Calhoun, an attorney, and the beneficiaries of the estate of one Arnold for a fee of 50 percent of the amount recovered from the United States on a claim owned by Arnold, deceased. Such contract constituted a claim against Arnold's estate under the jurisdiction of the Court of Probate (the Circuit Court of Kentucky). The Congress, in appropriating for the claim, limited the attorney fee to 20 percent of amount paid, made any contract to the contrary void, and prescribed a penalty for violation of such provisions. The administrator de bonis non of the decedent's estate refused to pay any amount over the 20 percent fixed by the Act, although the claim was duly presented and proved. The attorney sued on the fee contract. In the State Court the attorney secured a judgment against the estate in administration, which was sustained by the Court of Appeals of the State of Kentucky. But this Court reversed such judgment on the ground that the Federal Act was controlling—citing *Frisbie* v. *United States,* 157 U. S. 160. In the opinion, *Trust Co.* v. *Calhoun,* was a statement, perhaps dictum, to the effect that if the judgment were to be paid out of funds other than appropriated moneys it might not be invalid; but this ground was abandoned in *Calhoun* v. *Massie,* 253 U. S. 170—as was pointed

out by Mr. Justice McReynolds in the dissenting opinion.

In the Stein case in which this motion for rehearing is presented, the guardian made a contract with the attorney (R. 2) to present a pension claim and agreed to pay a fee therefor in excess of that allowed by the Act of July 4, 1884, and by that act made unlawful. On the authority of this Court's holdings in *Trust Co.* v. *Calhoun* and *Calhoun* v. *Massie, supra,* this contract could not have been enforced in a court by suit against the estate of the insane veteran. Likewise, on the authority of *Frisbie* v. *United States, supra,* if the contract had been made with the veteran, instead of with his guardian, it would have subjected the attorney to prosecution for violation of the penal provisions of said Act. It is impossible to draw any distinction in principle or logic between the present case and that against Arnold's administrator in the Probate (Circuit) court of Kentucky wherein this Court held that such Court could allow no fee in the administration in excess of that which had been paid the attorney by the Government in accordance with the Federal Statute. It is respectfully insisted that the Stein decision must be reversed, or the case of *Trust Co.* v. *Calhoun* overruled.

From the very beginning of the Government Congress had protected pensioners against fees and assignments (1 Stat. 245). A general law against assignments was enacted February 26,

1853, 10 Stat. 170, R. S. 3477. The acts respecting pension attorney fees, especially that of June 20, 1878, 20 Stat. 243, were in abrogation of such general statute. This act permitted such attorneys to contract for, and receive their fees in advance of payment of pension and in fact whether any pension were paid or not. To correct the evils growing out of said act, an amendment was attached to the appropriation act, resulting in the Act of July 4, 1884, 23 Stat. 101.

A full history of the fee legislation, and statement of the evils to be obviated is contained in the Congressional Record, House, April 22, 1884, Pages 3237 to 3241. It is clear from the above that it was the intent of the Congress that *no one, pension agent or attorney* should receive any fee whatsoever except *within the limits stated and in the manner provided,* or as this court said in *Frisbie* v. *United States,* 157 U. S., at page 167:

> The scope of the statute and the evident purpose of Congress are to prevent an applicant for pension from being mulcted any sum above ten dollars by any one assisting in obtaining the pension. Language expressing such intention cannot be clearer than that.

The language used is substantially the same throughout the long legislative history, and evidently was supposed to cover cases in Probate Courts as well as cases with which such courts have

no concern. Similar language was employed for the purpose as late as May 5, 1936, in Senate Bill 3839. That Bill as passed reads:

> That the Secretary of the Treasury be, and he is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated to the legal guardian of Randall Krauss, a minor, of Yakima, Wash., the sum of $60 per month until he attains the age of 21, in full satisfaction of his claims against the United States for the death of his father, mother, and sister, who were killed when struck by a United States Army airplane which crashed at Griffith Park, Calif., on June 20, 1935, *Provided,* That payments hereunder shall begin on the first calendar day of the month following the approval of this act: *Provided, further,* That no part of the amount appropriated in this act in excess of 10 percent thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

The money is directed to be paid to a guardian obviously appointed by a State Court. What would be the use of the limitation on the fee unless binding on the guardian and the court? But the lan-

guage used is not more clear than that of the Act of July 4, 1884, here in question, nor is it apparently different in principle.

The contemporaneous interpretations and construction of the Act, both administrative and judicial was to the effect that the limitation applies to all, and that no fee could be charged otherwise (see 8 P. D., 183, Decision of Secretary of the Interior, June 17, 1896; and 10 P. D., 403, Opinion of Assistant Attorney General to Secretary of Interior, also *U. S.* v. *Van Leuven,* 62 Fed. 52, *Caverly* v. *Robbins,* 20 N. E. 450 (Mass.), and *Christie* v. *Stegers, Admr.,* 56 S. W. 521 (Ky.).

Is the reasonableness of the fee, dehors the Statute controlling?

The Court mentions the supposed reasonableness of the fee, aside from the statute, but it is apparent the principle is the same whether the fee be $100, as in this case, or $4,000, as in a pending case not materially different. If the amount allowed by law is insufficient, that is a matter for legislation. In the *Gold Clause Cases, Norman* v. *B. & O. Ry., etc.,* 294 U. S. 239, this Court pointed out that the Act of Congress constituted an express interdiction (P. 307) as against the individual contracting and said (P. 311):

> With respect to those conditions and determinations, the Congress is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is,

> whether it has reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decision of the Congress as to the degree of the necessity for the adoption of that means, is final.

In reaching the decision in this case it is submitted, with all deference, the Court has misconceived the true intent of Congress in enacting the legislation, and that the decision is in conflict with prior decisions of this Court in point in principle, especially the decision in *Capital Trust Co.* v. *Calhoun* (*supra*).

In view of the foregoing it is submitted, with all respect and deference, that the Court should reverse, or at least modify its decision heretofore announced; and to that end a rehearing is prayed in the interest of the insane veteran in this case and of others similarly situated.

JAMES T. BRADY,
Solicitor,
EDWARD E. ODOM,
Assistant Solicitor,
Y. D. MATHIES,
Assistant Solicitor.
Veterans' Administration, Washington D. C.

U. S. GOVERNMENT PRINTING OFFICE: 1936

SUPREME COURT OF THE UNITED STATES.

No. 659.—October Term, 1935.

Frank T. Hines, Administrator of Veterans' Affairs (United States Veterans' Administration), Petitioner, *vs.* Minnie Stein, as Guardian of the Estate of Edmund J. Stein, a Weak-minded Person.	On Writ of Certiorari to the Superior Court of Pennsylvania, Western District.

[April 27, 1936.]

Mr. Justice McReynolds delivered the opinion of the court.

Respondent, as guardian for her son, an incompetent veteran, applied to the Court of Common Pleas, Allegheny County, Pennsylvania, to whose orders she was subject (50 P. S. § 941 *et seq.*), for permission to pay "out of the funds in her hands the sum of $100.00 to Hallock C. Sherrard, Esq., for his services and expenses and making the trip to Washington, D. C., to represent her in her claim for her said son's estate before said Board of Veterans' Appeals." The Administration had discontinued the veteran's compensation of $100.00 per month, upon the ground that disability existed prior to enlistment. Request for reinstatement was set for hearing before the Board of Veterans' Appeals at Washington, March 28, 1934. Respondent held for the estate $2,000.00, apparently pension money received from the Veterans' Administration. Mr. Sherrard had represented her since appointment and acted upon her request.

Petitioner, Frank T. Hines, appearing by counsel, admitted rendition of the services as stated. Reasonableness of the charge, if not inhibited by law, was not questioned. He denied the guardian's authority to contract for the expenditure and insisted that the application for permission to pay was not according to law. He asked that the prayer be limited to actual expenses incurred and a fee of $2.00.

The Court of Common Pleas granted the guardian permission to pay as she had prayed; upon the Administrator's appeal, the Superior Court approved; the Supreme Court refused further hearing.

Petitioner submits that Congress, proceeding within its delegated power, directly, or through authorized executive action, has prescribed permissible fees for services such as those rendered by Sherrard, and directed how they may be paid. Also has inhibited payment of other or different sum in any manner.

We need not consider the extent of Congressional power in this regard, since we are of opinion that, properly construed, the provisions relied upon do not apply where payments like the one here involved are directed by a state court having jurisdiction over the guardian of an incompetent veteran.

The petition for certiorari asserts that the objections to respondent's application to the Court of Common Pleas were based upon the President's Order of March 31, 1933 (Veterans' Regulation No. 10), permitted by §§ 4 and 7 of the Act of March 20, 1933, c. 3, 48 Stat. 9; "Instructions" promulgated by the Administrator under authority of that Order; and §§ 111, 114 and 115, Title 38, U. S. C. A.

It is true that the provisions cited place general restrictions upon the fees of attorneys in connection with pension matters and prescribe the method of payment. But we find nothing in any of these Acts of Congress which definitely undertakes to put limitation upon state courts in respect of guardians or to permit any executive officer, by rule or otherwise, to disregard and set at naught orders by courts to guardians appointed by them. Conflict in respect of such matters between state courts and the federal government, its officers or bureaus would be unseemly, perhaps extremely unfortunate. And in the absence of compelling language, we cannot conclude that there was intention to create a situation where this probably would occur.

During many years, Congress has recognized the propriety, if not the necessity, of entrusting the custody and management of funds belonging to incompetent pensioners to fiduciaries appointed by state courts, without seeking to limit judicial power in respect of them. To the contrary, it has directed that whenever any guardian, curator, or conservator fails properly to execute his trust, etc., the Administrator may "appear in the court which has appointed

. . . and make proper presentation of such matters." C. 723, § 2, 44 Stat. 792; c. 510, § 2, 49 Stat. 607; 38 U. S. C. A. § 450. Authority of the state courts over guardians for incompetents is thus definitely recognized. The Administrator is expressly empowered to suspend further payments if the guardian is found to be acting improperly; so much is possible without conflict.

Nothing brought to our attention would justify the view that Congress intended to deprive state courts of their usual authority over fiduciaries, or to sanction the promulgation of rules to that end by executive officers or bureaus.

The broad purpose of regulations in respect of fees of those concerned with pension matters is to protect the United States and beneficiaries against extortion, imposition or fraud. *Calhoun* v. *Massie*, 253 U. S. 170, 173. Dangers of this character are not to be expected in connection with the orderly exercise of authority by state courts over appointees properly entrusted with pension funds. The purpose in view is for consideration when the true meaning of statute or rule is sought.

The challenged decree must be

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.